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COURT OF CRIMINAL APPEALS
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No. PD-0478-20

FILED
COURT OF CRIMINAL APPEALS
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IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

ROBERT F. HALLMAN, Respondent
v.
THE STATE OF TEXAS, Petitioner

02-18-00434-CR, Court of Appeals, Second District, Texas
1548964R, Criminal District Court No. 1, Tarrant County, Texas
The Honorable Sheila Wynn, presiding over voir dire; Hon. Keith Dean, visiting, presiding over guilt/innocence; Hon. Elizabeth Beach, presiding judge, pre-trials and punishment

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RESPONDENT'S BRIEF ON THE MERITS

January 4th, 2021

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THE CHARGES: Count 1: Continuous Sexual Abuse of a Child Under 14[1]
Count 2- 3: Aggravated Sexual Assault of Child under 14[2]
Count 4 - 6: Indecency with a Child by Contact[3]
Count 7: Sexual Assault of a Child Under 17[4]

THE PLEA: Not Guilty on all counts.[5]

THE VERDICT (Jury): Not guilty count 1- continuous sexual abuse;
Guilty- counts 2 – 7.[6]

THE PUNISHMENT (Jury): Counts 2 – 7- habitual found true, Life.[7]

NOTICE OF APPEAL FILED: September 20th, 2018.[8]

TRIAL COURT CERTIFICATION OF RIGHT TO APPEAL FILED[9]

MOTION FOR NEW TRIAL FILED: October 3rd, 2018,
overruled by operation of law.[10]

APPELLANT'S BRIEF FILED: May 23rd, 2019.

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[1] CR- 278.
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ONE ISSUE PRESENTED:

The trial court erred in the denial of a mistrial where the state violated 39.14 discovery requirements by not disclosing reports and statements of the defendant, a police officer and a witness

COURT OF APEALS REVERSED IN A 41 PAGE PUBLISHED OPINION: May 7th, 2020.[11]

STATE DID NOT FILE MOTION FOR REHEARING.

STATE'S PETITION FOR DISCRETIONARY REVIEW GRANTED: September 30th, 2020.

STATES BRIEF ON THE MERITS FILED: November 16th, 2020.

RESPONDENT'S RESPONSE BRIEF FILED: January 4th, 2021.

[11] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted)(attached as exhibit A).

RESPONSE TO GROUNDS FOR REVIEW

GROUND NUMBER ONE:

Petitioner Ground:

> Did the Court of Appeals err when it conducted a purely *de novo* review of the trial court's denial of a motion for mistrial for an alleged *Brady* violation, a ruling which is traditionally reviewed for an abuse of discretion?

Response:

In a word, no. Three points of importance. First, the Brady materiality determination takes precedence. Second, a de novo review is appropriate in a materiality determination. Third, deference accorded the trial court in an abuse of discretion assessment is predicated upon the court's personal experience of the evidence. This is negated in this case. The judge did not hear the evidence.

GROUND NUMBER TWO:

Petitioner Ground:

> In concluding that the non-disclosed evidence in this case was material because it "might have tipped the balance and resulted in an acquittal," did the Court of Appeals erroneously diverge from the proper materiality standard, specifically that evidence is material only if there is a reasonable probability that, had it been disclosed, the outcome of the trial would have been different?

Response:

The state misstates the finding of the court of appeals by taking one sentence out of context which, in fact, properly applied the materiality standard.

GROUND NUMBER THREE:

Petitioner Ground:

> In light of the entire body of evidence, did the Court of Appeals err in concluding that Appellant's ability to impeach a witness regarding a distant extraneous offense with her own handwritten statement in reasonable probability would have resulted in a different outcome at trial, when that witness was actually impeached on the same issue in a different manner?

Response:
The witness was not impeached in a ‘different’ manner, but was relegated to ineffective impeachment by the state’s failure to disclose evidence. Two factors: first, confrontation with a personally written statement is in no way the ‘same’ as impeachment with a third party offense report. Second, this is especially true when the state negated the impeachment by leaving a false impression with the jury.

STATEMENT OF FACTS

A brief statement of fact is provided as an overview. More specific facts are discussed as they become relevant to the legal arguments below. Appellant and the complainant's mother were married for approximately twenty years and had four children.[12] They had a volatile relationship with both parties calling the police and CPS on the other from time to time.[13]

Appellant was ultimately charged, during the course of their divorce, with sexually abusing the two oldest daughters over a period of years.[14] There was a delayed outcry made by the older daughter, years after the abuse, and after the younger daughter had moved in with Appellant while he and the mother were separated, in a custody battle and in the process of a divorce.[15] The older daughter out-cried to her mother who called the police.[16] Because of this outcry, Appellant was arrested and the younger daughter was returned home to the mother.[17]

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[12] R. Vol. XI – 108.
[13] R. Vol. XI – 165.
[14] CR. – 6-7.
[15] R. Vol. XI – 138 – 140; Vol. XIV – 175 – 176, 213 - 214.
[16] *Id.*
[17] *Id.*

Just before the trial was set to begin on the older daughter's allegation and, when she was refusing to testify, the younger daughter out-cried for the first time to her mother about being abused.[18] The trial was continued and the case re-indicted to add both daughters as alleged complainants. The jury acquitted respondent of Continuous Sexual Assault which was the only count alleging abuse of the older daughter.[19] The jury convicted respondent of sexual abuse of the younger daughter.[20]

At the punishment phase the discovery violation came to light.[21] The visiting judge, who heard the guilt-innocence testimony, did not preside over the punishment phase as the regular judge had returned.[22] During punishment, it was learned the state failed to disclose the entirety of a family violence packet, reports and witness statements relative to an extraneous offense introduced at the guilt-innocence

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[18] R. Vol. XI – 141 – 143; R. Vol. XIV – 165 – 167.
[19] CR- 278 - 289.
[20] *Id.*
[21] R. Vol. XVIII – 43 – 69; state's exhibit 36- the disclosed offense report attached as exhibit B; defense exhibit 28- the non-disclosed evidence attached as exhibit c.
[22] R. Vol. 39 – 69 (39.14 hearing attached as exhibit D).

phase.[23] Because the testimony and verdict had already occurred and could not be undone, trial counsel moved for a mistrial.[24] The court denied the motion, from which the instant appeal ensued. The Second Court of Appeals reversed for the 39.14 discovery violation finding the undisclosed evidence material under the *Brady* standard requiring reversal.[25] This Court granted review.

[23] *Id*.; R. Vol. X – 27- 28, 118 - 121, 139 – 140; 181 – 182; R. Vol. XI – 47 – 48; 74 – 76, 87, 133, 158 – 159, 201 – 206, 214 – 215; R. Vol. XIV – 18 – 20, 111 – 112, 117, 193 – 194, 205 - 212.
[24] R. Vol. XVIII – 11, 39 – 69.
[25] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted).

SUMMARY OF ARGUMENT

GROUND NUMBER ONE:

Petitioner Ground:

> Did the Court of Appeals err when it conducted a purely *de novo* review of the trial court's denial of a motion for mistrial for an alleged *Brady* violation, a ruling which is traditionally reviewed for an abuse of discretion?

Response:

In a word, no. Three points of importance. First, the *Brady* materiality determination takes precedence. Second, a de novo review is appropriate in a materiality determination. Third, deference accorded the trial court in an abuse of discretion assessment is predicated upon the court's personal experience of the evidence. This is negated in this case. The judge did not hear the evidence.

The materiality inquiry supplants all other standards of review.[26] Because of the constitutional implications of a materiality finding under 39.14, *Brady*

[26] *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566 (1995); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002); *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002). *See also McBride v. State*, 838 S.W.2d 248, 250 (Tex. Crim. App. 1992)(pre-dates amendments to 391.14 but same standard applies); *see also its predecessor: Quinones v. State*, 592 S.W2d 936, 940 – 41 (Tex. Crim. App 1980).

constitutes the applicable standard.[27] Once materiality is found under *Brady*, harm is replete, as is an abuse of discretion.[28] Thus, the court found an abuse of discretion via the materiality finding.[29]

Materiality is a legal question reviewed de novo.[30] The materiality analysis "involves balancing the strength of the [favorable] evidence against the evidence supporting the conviction."[31] The court of appeals painstakingly, and correctly, balanced the two.

Finally, deference in the instant case does not apply. Deference accorded in an abuse of discretion calculation is based upon personal observation of evidence, credibility and demeanor.[32] The judge was not present to observe any of these.

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[27] *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566 (1995); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002).
[28] *Id.*
[29] *Hallman v. State*, 603 S.W.3d 178, 199 (Tex. App. – Fort Worth May 7, 2020, pet. granted) (attached as exhibit A).
[30] *Ex Parte Chaney*, 563 S.W.3d 239, 264 (Tex. Crim. App. 2018).
[31] *Hampton v. State*, 86 S.W.3d 603, 613 (Tex. Crim. App. 2002).
[32] *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997); *See* Villarreal, 935 S.W.2d 134, 139-41 (McCormick, P.J., concurring); *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004).

GROUND NUMBER TWO:

Petitioner Ground:

> In concluding that the non-disclosed evidence in this case was material because it "might have tipped the balance and resulted in an acquittal," did the Court of Appeals erroneously diverge from the proper materiality standard, specifically that evidence is material only if there is a reasonable probability that, had it been disclosed, the outcome of the trial would have been different?

Response:

The state misstates the finding of the court of appeals by taking one sentence out of context which, in fact, properly applied the materiality standard.

The Court correctly discussed and applied the prevailing standard of materiality - a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different.[33] The court found the evidence "sufficient to undermine confidence in the jury's verdict."[34] Although the court did not use specific 'magic words', it assessed the issue correctly throughout utilizing the correct standard.

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[33] *Hallman*, 603 S.W.3d at 187 – 88, 192 – 93, 198 – 200.

[34] *Hallman*, 603 S.W.3d at 199.

GROUND NUMBER THREE:

Petitioner Ground:

> In light of the entire body of evidence, did the Court of Appeals err in concluding that Appellant's ability to impeach a witness regarding a distant extraneous offense with her own handwritten statement in reasonable probability would have resulted in a different outcome at trial, when that witness was actually impeached on the same issue in a different manner?

Response:

The witness was not impeached in a 'different' manner, but was relegated to ineffective impeachment by the state's failure to disclose evidence. Two factors: first, confrontation with a personally written statement is in no way the 'same' as impeachment with a third party offense report. Second, this is especially true when the state negated the impeachment by leaving a false impression with the jury.

The defensive theory was that the mother manipulated her daughters to make false allegations in order to gain custody.[35] The mother's character was central to the defense.[36] She testified she told the police during the extraneous assault about the sexual abuse.[37] This, if true, negated the defensive theory and validated her credibility. However, her undisclosed handwritten statement proved this was a lie and brought to light her manipulative character in attempting to falsely pre-date her

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[35] R. Vol. X – 27 – 28, 118 – 121, 139 – 140, 181 – 182; R. Vol. XI – 47 – 48, 74 – 76, 133, 158 – 159, 201 – 206, 214 – 215; R. Vol. XIV – 18 – 20, 111-112, 117, 193-194, 205 – 212.

[36] *Hallman*, 603 S.W.3d at 199.

[37] R. Vol. XI – 198 – 204.

report of the abuse.[38]

The offense report was not a sufficient substitute for impeachment. No better evidence exists when confronting a witness than their own handwritten statement. This is especially true when the state capitalized upon the lack of a statement to leave a false impression with the jury that the mother made a report of sex abuse.[39]

The court correctly found the state, by failing to disclose the statement, deprived respondent the opportunity to fully develop his defensive theory.[40] When weighed and considered against other inconsistencies in the mother and complainant's testimony and the lack of any physical evidence the evidence was sufficient to undermine confidence in the jury's verdict.

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[38] R. Vol. XVIII – 43 – 69; state's exhibit 36- the disclosed report attached as exhibit B; defense exhibit 28- the nondisclosed evidence, including the witness statement attached as exhibit C.

[39] R. Vol. XIV – 208 – 212; R. Vol. XIX – 62.

[40] *Hallman,* 603 S.W.3d at 199.

ARGUMENT

GROUND NUMBER ONE:

Petitioner Ground:

> *Did the Court of Appeals err when it conducted a purely de novo review of the trial court's denial of a motion for mistrial for an alleged Brady violation, a ruling which is traditionally reviewed for an abuse of discretion?*

Response:

In a word, no. Three points of importance. First, the *Brady* materiality determination takes precedence. Second, a de novo review is appropriate in a materiality determination. Third, deference accorded the trial court in an abuse of discretion assessment is predicated upon the court's personal experience of the evidence. This is negated in this case. The judge did not hear the evidence.

In assessing a 39.14 violation, the Brady materiality determination supplants other standards of review.

The court specifically reviewed the denial of the motion for mistrial for an "abuse of discretion" to uphold the ruling if it was in "the zone of reasonable disagreement".[41] However, it purposely did not address the 39.14 violation under the *Mosley* abuse of discretion prism but, instead, under the *Brady* materiality

[41] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted).

factors.[42] This standard is well founded in precedent from this Court and the Supreme Court.[43]

In this Court's *Hampton* opinion, *Brady*'s three prong test for reversible error was held to be assessed independently from any other harm analysis or standard of review.[44] Where the *Brady* harm elements are satisfied, so are the harm requirements of even the most stringent levels of review.[45] The Court stated, "In both *Brady* and *Bagley*, the Supreme Court explicitly rejected the use of a harmless error rule when the prosecutor fails to disclose certain evidence favorable to the accused… ".[46]

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[42] *Mosley v. State*, 983 S.W.2d 249 (Tex. Crim. App. 1998)(op. on reh'g).
[43] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted); *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566 (1995); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002); *Mosley v. State*, 983 S.W.2d 249 (Tex. Crim. App. 1998)(op. on reh'g).
[44] *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002); Tex. Code Crim. Pro., Article 39.14; *Brady v. Maryland*, 373 U.S. 83 (1963).
[45] *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566 (1995); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002).
[46] *Id.* (reversible error under *Brady* will always constitute reversible error under TRAP Rule 44.2(a)).

As the Supreme Court stated in *Kyles*, a reasonable probability that the undisclosed evidence would have resulted in a different outcome necessarily entails the conclusion that the suppression must have had a substantial and injurious effect or influence in determining the jury's verdict.[47]

Finally, as this Court made clear as long ago as *McBride*, "[t]he decision on what is discoverable is left to the decision of the trial judge. We will not disturb a trial judge's decision under 39.14 absent an abuse of discretion. However, the trial judge is required 'to permit discovery ***if the evidence is material*** to the defense of the accused' " (emphasis supplied).[48] Where there is a reasonable probability the undisclosed evidence would have resulted in a different outcome (*Brady* materiality), there is also a conclusion that it had a substantial and injurious effect or influence in the jury's verdict (subsumes an abuse of discretion).

Once materiality is found, an abuse of discretion follows

This can sometimes cause confusion in analysis. Within the determination of materiality also resides a determination of harm by any standard. Under the

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[47] *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566 (1995).
[48] *McBride v. State*, 838 S.W.2d 248, 250 (Tex. Crim. App. 1992)(pre-dates amendments to 391.14 but same standard of review apply); *see also its predecessor: Quinones v. State*, 592 S.W2d 936, 940 – 41 (Tex. Cim. App 1980).

prevailing precedent, the disclosure requirements of 39.14 parallel *Brady* and its underlying policy.[49] Because 'materiality' is determined under these constitutional guidelines, the conventional standards of review for a denial of a mistrial do not apply. Instead, 39.14, as essentially a statutory extension of *Brady*'s due process requirements, results in its own standard of review.[50] Once materiality is found, harm is replete, as is an abuse of discretion.

The court found an abuse of discretion via the materiality finding

The prevailing precedent[51] is to determine 39.14 'materiality' under the stringent constitutional due process standard of *Brady*. Via application of this

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[49] Tex. Code Crim. Pro., Article 39.14; *Brady v. Maryland*, 373 U.S. 83 (1963). However, this all could change once this Court decides how to determine "materiality" under *Watkins v. State*, 554 S.W.3d 819 (Tex. App. – Waco 2018, pet. granted).

[50] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted); *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566 (1995); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002); *Mosley v. State*, 983 S.W.2d 249 (Tex. Crim. App. 1998)(op. on reh'g).

[51] Counsel is mindful that the question of how 39.14 materiality will be determined is hotly debated and presently pending before this Court. *Watkins v. State*, 554 S.W.3d 819 (Tex. App. – Waco 2018, pet. granted). While we wait in eager anticipation, the prevailing standard remains.

standard, once materiality is found, harm is inherent.[52] No other standard of review applies. The Court of Appeals correctly found the undisclosed evidence "material", res ipsa, constituting a *Brady* violation which automatically evidenced an abuse of discretion.[53] Thus, the court was correct in finding the trial court abused its discretion in finding otherwise.

De novo review is required in a materiality assessment

The materiality analysis "involves balancing the strength of the [favorable] evidence against the evidence supporting the conviction."[54] The violation must be cumulatively evaluated in light of all the other evidence at trial without any piece of evidence considered in isolation.[55] The court of appeals painstakingly balanced the two. If this is to be considered a de novo review, it was entirely appropriate.

Materiality is a legal question reviewed de novo.[56] For mixed questions of law and fact a reviewing court uses a *de novo* standard of review.[57] The application

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[52] *Ex Parte Miles*, 359 S.W.3d 647 (Tex. Crim. App. 2012).
[53] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted).
[54] *Hampton v. State*, 86 S.W.3d 603, 613 (Tex. Crim. App. 2002).
[55] *Pitman v. State*, 372 S.W.3d 261, 264 (Tex. App. – Fort Worth 2012, pet. ref'd); *Hampton*, 86 S.W.3d at 612-13.
[56] *Ex Parte Chaney*, 563 S.W.3d 239, 264 (Tex. Crim. App. 2018).
[57] *Hampton v. State*, 86 S.W.3d 603, 611 (Tex. Crim. App. 2002).

of the scope of a statute to specific, historical facts is a mixed question of law and fact. Both of these matters are reviewed *de novo* at each appellate level.[58]

Deference is not due, where the court did not hear the evidence

The deference given in an abuse of discretion assessment does not apply because the judge did not view credibility, demeanor or the evidence. Where, as here, the trial court is in no better position than the appellate court to make the application of law to fact determination, a de novo review is the appropriate standard.[59] An abuse of discretion standard does not necessarily apply to questions whose resolution do not turn on the court's evaluation of credibility and demeanor.[60] "The amount of deference appellate courts afford a trial court's rulings depends upon which 'judicial actor' is better positioned to decide the issue."[61]

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[58] *Id.*
[59] *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004).
[60] *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997); *See* Villarreal, 935 S.W.2d 134, 139-41 (McCormick, P.J., concurring).
[61] *Id.*

In the instant case, the judge ruling on the motion for mistrial was in no better position than the appellate court to make the application of law to fact determination because she was not present at the guilt innocence phase of trial and did not have the opportunity to personally assess the credibility and demeanor of the witnesses or the nature of the evidence.[62]

The undisclosed evidence was not revealed until punishment.[63] The presiding Judge who ruled on the motion for mistrial was not present during guilt/ innocence.[64] A visiting Judge presided over the entirety of guilt/ innocence phase. Once a guilty verdict was returned, the presiding judge returned to sit only over the punishment phase.[65] Thus, she had heard none of the witness testimony or evidence relevant to the inquiry of whether the undisclosed documents would have resulted in a different outcome.[66] As pointed out by trial counsel, she simply could not make a fair determination of materiality without having heard the evidence.[67]

The defense requested the hearing be held in front of the visiting judge who

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[62] R. XVIII – 11, 39 – 69 (entire 39.14 hearing attached as exhibit D)
[63] R. Vol. XVIII – 11, 39 – 69.
[64] R. Vol. XVIII – 56.
[65] *Id.*
[66] *Id.*
[67] R. Vol. XVIII – 61 - 62.

presided over guilt/innocence and was available the next day or, in the alternative, requested the judge read the testimony in order to make an informed ruling.[68] These requests were denied.[69] The court not only abused her discretion in ruling on a matter in which it was impossible for her to fairly discern, she also was not due the typical deference in an abuse of discretion review.

[68] R. Vol. XVIII – 65 – 66.
[69] *Id.*

GROUND NUMBER TWO:

Petitioner Ground:

> In concluding that the non-disclosed evidence in this case was material because it "might have tipped the balance and resulted in an acquittal," did the Court of Appeals erroneously diverge from the proper materiality standard, specifically that evidence is material only if there is a reasonable probability that, had it been disclosed, the outcome of the trial would have been different?

Response:

The state misstates the finding of the court of appeals by taking one sentence out of context which, in fact, properly applied the materiality standard.

The lower court spent over half of its 40 page opinion analyzing all the facts and applying the correct standard for materiality before determining confidence was undermined in the jury's verdict and there was a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different.[70] Yet, the state plucks out one partial sentence on the last page to argue error. This is misleading, disregards the whole of the court's analysis, and ignores

[70] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted).

the fact the sentence, in context of the whole, states the correct standard.

After an exhaustive review of the evidence, the lower court opined:

> Credibility was key to this case, and by failing to disclose [the mother's] written statement to the police – which, contrary to [her] testimony during the trial, did not mention her suspicions that Hallman had been sexually abusing anyone- before or during the guilt-innocence phase of trial, the state deprived Hallman of the opportunity to fully develop his defensive theory that [the mom and complainants] were lying. [Internal footnote: The jury apparently determined that [the older complainant] was not credible because it did not find Hallman guilty of the only count involving her.] ***This undisclosed evidence presented a reasonable probability that a total or substantial discount of [the mother's] testimony might have produced a different result*** during the guilt-innocence phase of trial. When weighed and considered against other inconsistencies in [the mom and complainants] testimonies and the lack of any physical evidence that Hallman had sexually abused [the complainants], we conclude that this evidence ***would have been sufficient to undermine confidence in the jury's verdict***. (emphasis supplied).[71]

The court goes on to find the evidence material "because of the reasonable probability that it might have tipped the balance and resulted in an acquittal."[72]

This is the correct materiality standard. The complained of statement mirrors the *Augurs* holding. "[I]mplicit in the requirement of materiality is a concern that

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[71] *Id.* at 199.

[72] *Id*.

the suppressed evidence ***might have affected the outcome at trial***" (emphasis supplied).[73] Evidence is material when there is a "reasonable probability" that it would have affected the jury's judgement and the trial result would have been different.[74] A 'reasonable probability' is one sufficient to undermine confidence in the outcome of trial.[75]

There is no requirement that there would 'more likely than not' be an acquittal, but rather that the evidence is sufficient to undermine confidence in the verdict.[76] Although the court did not use specific 'magic words' in one sentence referenced by the state, it assessed the issue correctly throughout utilizing the correct standard.

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[73] *United States v. Augurs*, 427 U.S. 97, 104, 96 S.Ct. 2392, 98 (1976)
[74] *Id.*
[75] *Id.; Pena v. State, 353 S.W.3d 797 (Tex. Crim. App. 2011).*
[76] *Id.*

GROUND NUMBER THREE:

Petitioner Ground:

> In light of the entire body of evidence, did the Court of Appeals err in concluding that Appellant's ability to impeach a witness regarding a distant extraneous offense with her own handwritten statement in reasonable probability would have resulted in a different outcome at trial, when that witness was actually impeached on the same issue in a different manner?

Response:

The witness was not impeached in a 'different' manner, but was relegated to ineffective impeachment by the state's failure to disclose evidence. Two factors: first, confrontation with a personally written statement is in no way the 'same' as impeachment with a third party offense report. Second, this is especially true when the state negated the impeachment by leaving a false impression with the jury

The undisclosed statement went to the heart of the defense.

The state incorrectly minimizes the materiality of the undisclosed handwritten statement of the witness who was the impetus of the case and whose character was central to the defense. What the state ironically characterizes as a "distant extraneous offense" was proffered ***by the state*** at guilt-innocence as

probative evidence.[77]

Determining materiality involves balancing the strength of the exculpatory evidence against the evidence supporting conviction.[78] Sometimes, what appears to be a relatively inconsequential piece of exculpatory evidence takes on added significance in light of other evidence at trial.[79] Such was the holding of the lower court. The court found this evidence especially material for impeachment in light of the defensive theory and the entire body of evidence.[80]

The mother was the driving force of the allegations; thus, effectively impeaching her credibility was pivotal to the defense

The defensive theory was that the mother had the complainants make false accusations of sexual assault in order to retain custody of her children during the separation and in the divorce.[81] This was substantiated by many factors including the evidence of her anger about her youngest daughter choosing to live with

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[77] R. Vol X – 27 – 28, 118 – 121, 139 – 140, 181 – 182; R. Vol. XI – 47 – 48, 74 – 76, 87, 133, 158 – 159, 201 – 206, 214 – 215; R. Vol. XIV – 18 – 20, 111 – 112, 117, 193 – 194, 205 – 212.

[78] *Hampton v. State*, 86 S.W.3d 603, 605 (Tex. Crim. App. 2002).

[79] *Id.*

[80] *Hallman v. State*, 603 S.W.3d at 199.

[81] R. Vol. X – 27- 28, 118 - 121, 139 – 140; 181 – 182; R. Vol. XI – 47 – 48; 74 – 76, 87, 133, 158 – 159, 201 – 206, 214 – 215, 227; R. Vol. XIV – 18 – 20, 111 – 112, 117, 193 – 194, 205 - 212.

respondent and taking his side.[82] The ability to develop her motives, manipulative character, and lack of credibility as well as prove she lied under oath were critical to the defense.

Factual context reflects the statement was vital

The extraneous August 10, 2014 assault was introduced by the state at guilt-innocence under 38.37 and 404(b).[83] Ultimately, it was also central to the defensive theory of the case.[84] The mother, both complainants and a police officer testified about this offense.[85] During the extraneous incident, the younger daughter wanted to stay with respondent and took his side.[86] This was the compelling factor causing the mother's outrage and culminating in the separation and eventual divorce.[87]

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[82] Id.
[83] CR – 18, 77, 122, 134, 139.
[84] R. Vol. X – 27- 28, 118 - 121, 139 – 140; 181 – 182; R. Vol. XI – 47 – 48; 74 – 76, 87, 133, 158 – 159, 201 – 206, 214 – 215; R. Vol. XIV – 18 – 20, 111 – 112, 117, 193 – 194, 205 - 212.
[85] *Id.*
[86] R. Vol. Vol. XII – 46; R. Vol. XIV – 90; R. Vol. X – 139 – 140; 181 – 182.
[87] R. Vol. XI – 214; R. Vol. XIV – 18 - 19, 59 – 60.

Two years later, after respondent no longer lived at the house, the younger daughter once again chose to leave her mother's house to live with her father.[88] Her mother was "livid".[89] Three days later the mother called the police to report the older daughter made an outcry.[90] The defense argument was that this was done in an effort to get the younger daughter back, which succeeded.[91] Although the sexual abuse was later stated to have occurred for years *prior to* this date with the mother in the home, no allegation of sexual assault had been made to the police until *after* the younger daughter left. Thus, the timing of the outcry was crucial as formative in developing the motive to falsify the allegations of abuse.

The younger daughter did not make an outcry until a year after returning home and a day before the trial regarding the older daughter's accusations.[92] The younger daughter made her outcry right after learning from her mother that the older daughter was refusing to testify against Appellant.[93] The single common denominator to the outcries was the mother.

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[88] R. Vol. XI – 134 – 136; R. Vol. XIV- 175- 176.
[89] R. Vol. XIV – 59 – 60.
[90] R. Vol. XI – 138 – 140; R. Vol. XIV – 165 – 167, 175 – 176.
[91] R. Vol. XI – 138 – 140; Vol. XIV – 175 – 176, 213 – 214.
[92] R. Vol. – XI – 141 – 143: R. Vol. XIV – 165 – 167.
[93] *Id.*

The undisclosed statement proved the mother lied under oath

The mother testified that she told the police two years earlier, during the extraneous assault offense, about the sexual abuse.[94] In her testimony, she explicitly detailed what she told the officer about the sexual abuse and what occurred thereafter.[95] This, if true, negated her motive to get the daughter's to lie about abuse as it pre-dates the separation and her daughter moving in with respondent. It also validated her claim that she reported the abuse as it was occurring and not out of the blue years later when her daughter chose to move out.

Her undisclosed, handwritten statement proved this was a lie.[96] She never once mentioned any type of sexual abuse or even suspicion thereof and, in fact, denied the same in the family violence packet.[97] She also never mentioned she had given a hand written statement at all. Use of this statement would have brought to light the mother's detailed untruths in the testimony as well as her manipulative

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[94] R. Vol. XI – 198 – 204.
[95] R. Vol. XI – 198 – 204.
[96] Statement Attached as exhibit C with all the undisclosed records.
[97] *Id.*

character in attempting to falsely pre-date her report of the abuse.

The state relied upon the undisclosed documents to leave a false impression with the jury

The defense called the officer from the assault incident to establish that the mother never made any allegation of sexual abuse.[98] The officer was no longer employed with the Fort Worth Police department and only had the disclosed offense report to refresh his memory.[99] Sexual abuse was not mentioned in the report.

The state extensively and exclusively cross-examined the officer concerning his lack of memory of the incident and his sole reliance upon the offense report for his testimony.[100] This left a false impression with the jury that the mother reported the abuse and the officer simply failed to remember or write it in his report.[101] However, the state had the complete, undisclosed file in their office, not only including the mother's written statement, but also the officer's probable cause affidavit and a detailed family violence packet which proved this untrue.[102] The

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[98] R. Vol. XIV – 203.
[99] R. Vol. XIV – 204 - 205.
[100] R. Vol. XIV – 208 – 212; R. Vol. XIX – 62.
[101] R. Vol. XIV – 208 – 212; R. Vol. XIX - 62.
[102] R. Vol. XIX – 751. (Officer Affidavit attached in Exhibit C).

undisclosed documents reveal that there was no report of sexual contact and, in fact, it was specifically denied.

The state not only deprived the defense of important evidence, but compounded the harm by capitalizing upon the missing document to negate the impeachment. The defense was not allowed to impeach the witness on "the same" issue in a "different manner" but, instead, was relegated by the state's non-disclosure to ineffective impeachment.

Confrontation with a handwritten statement is irreplaceable evidence

The state withheld evidence that denied effective cross-examination of the witness. No better evidence exists when confronting a witness than their own handwritten statement. It is black and white documentation that cannot be changed or manipulated and can be introduced into evidence for the jury to read when denied[103]. Its value is immeasurable. For this, there is no suitable replacement. This type of confrontation is in no way the 'same' as impeachment through a third

[103] *See and compare*, Tex. R. Evid. R. 613; Tex .R. of Evid, Rule 612, esp (c).

party offense report.

Although the court found the non-disclosure of the statement alone to be reversible, there were a number of other undisclosed documents that factor into the equation

1- ***The undisclosed family violence packet proved the mother lied***

In the undisclosed family violence packet, there were direct questions asked regarding whether sexual assault or a threat of sexual assault occurred.[104] None were reported. The state had possession of these records yet cross-examined the officer in such a way as to leave a false impression that he did not remember whether the mother made the sexual allegation. Had the disclosed documents been provided to the defense, they would have negated this argument.

2- ***The undisclosed family violence packet refuted the false impression left that the children were upset and "very emotional"***

The state, during cross-examination of the officer, left the impression that the children were "very emotional" or upset the day of the assault, in an effort to validate the mother's testimony. However, the undisclosed family violence packet reflected exactly the opposite- the officer stated the children were "calm".[105]

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[104] R. Vol. XIX – 755 - 756 (attached as Exhibit C).
[105] R. Vol. XIX – 756.

3 -The undisclosed family violence packet impeached the mother's testimony that the complainants were very upset and "traumatized" at the assault

The mother testified that on the day of the assault, complainants were upset and "traumatized".[106] However, as stated above, the packet directly disputes this by specifically stating the daughters were "calm".

4 - The undisclosed family violence packet refuted the mother's claim of appellant's threats to kill them if he went to jail

The mother testified respondent threatened that if he ever went to jail he would kill her.[107] In the packet the mother was questioned as to threats to kill or retaliation and she denied there were any.[108] The defense was denied this impeachment material going directly to the mother's credibility and to diminish highly inflammatory testimony.

5– The undisclosed statement impeached her testimony that child custody was not an issue

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[106] R. Vol. XI – 204.
[107] R. Vol. XI – 126, 208.
[108] R. Vol. XIX – 756.

The mother denied her anger over child custody. She testified that they did not fight over the kids and that no one took sides.[109]

In summary, the conviction depended on credibility and the undisclosed evidence went directly to the heart of that issue

The court carefully weighed every piece of evidence in the case and found the credibility issue "key".[110] "Because we must analyze the alleged violation in light of all the other evidence at trial, *see Pittman*, 372 S.W.3d at 264, we have reviewed the entire record of the guilt-innocence phase of the trial."[111] The court outlined each witness's testimony and assayed evidence toward which the undisclosed documents would have furthered the defense. Evidence such as: no physical evidence, inconsistent statements regarding the alleged abuse, no report of sexual abuse to CPS and counselors when specifically asked, failure to allege sexual abuse in divorce petition, the jury finding one complainant not credible, the lengthy deliberation and three requests from the jury regarding timeline information (the crux of the defense argument of the mother's motive to make false

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[109] R. Vol. XI – 198 – 204 – 206; R. Vol. XVIII – 753.
[110] *Hallman v. State*, 603 S.W.3d 178 (Tex. App. – Fort Worth May 7, 2020, pet. granted).
[111] *Id*.; *Pittman v. State*, 372 S.W.3d 261 (Tex. App –Fort Worth 2012, pet. ref'd).

allegations), just to name a few.

The court correctly concluded, the state failed to comply with the Michael Morton Act's disclosure requirements until the second day of the punishment phase of trial. The conviction was "entirely dependent upon the jury's credibility determinations" because there was "no physical evidence to support" the allegations. The mother testified that she had reported sexual abuse during the extraneous offense, yet her undisclosed statement proved this was a lie, giving this piece of evidence "significant impeachment value".

Credibility was "key" to the case and by failing to disclose the written statement, the state deprived respondent "the opportunity to fully develop his defensive theory that the [mother and complainants] were lying". The court established, "[w]hen weighed and considered against other inconsistencies in [the mother and complainant's] testimony and the lack of any physical evidence that Hallman had sexually abused [the complainants], we conclude that the evidence

would have been sufficient to undermine confidence in the jury's verdict."[112]

The court properly and carefully assayed all the evidence, applying the proper standard of review, to find materiality, an abuse of discretion and a required reversal. Such a well-founded holding should not be disturbed.

[112] *Hallman v. State*, 603 S.W.3d 178, 198 - 99 (Tex. App. – Fort Worth May 7, 2020, pet. granted).

CONCLUSION AND PRAYER

For all the foregoing reasons, respondent prays this Honorable Court either dismiss the appeal as improvidently granted or uphold the opinion of the court of appeals.

Respectfully submitted,

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APPENDIX

EXHIBIT A
Lower court opinion

Hallman v. State

Court of Appeals of Texas, Second District, Fort Worth

May 7, 2020, Delivered

No. 02-18-00434-CR

Reporter
603 S.W.3d 178 *; 2020 Tex. App. LEXIS 3881 **

ROBERT F. HALLMAN, Appellant v. THE STATE OF TEXAS

Notice: PUBLISH. *TEX. R. APP. P. 47.2(b)*

Subsequent History: Petition for discretionary review granted by ***Hallman***, *2020 Tex. Crim. App. LEXIS 759 (Tex. Crim. App., Sept. 30, 2020)*

Prior History: [1]** On Appeal from Criminal District Court No. 1, Tarrant County, Texas. Trial Court No. 1548964R.

Hallman *v. Davis, 2019 U.S. Dist. LEXIS 19851 (N.D. Tex., Feb. 7, 2019)*

Core Terms

discovery, trial court, sexual abuse, continuance, guilt-innocence, written statement, mistrial, hit, disclosure, arm, reasonable probability, sexual assault, designated, documents, interview, sexual, cross-examination, impeachment, undisclosed, disclose, abused, phone, phase of the trial, punishment phase, defense counsel, exculpatory, witnesses, forensic, grabbed, outcry

Case Summary

Overview

HOLDINGS: [1]-Where defendant was convicted of multiple counts of sexual assault of a child and indecency with a child, the State failed to comply with the Michael Morton Act's disclosure requirements set forth in *Tex. Code Crim. Proc. Ann. art. 39.14* by withholding the complainant's mother's written statement because it had significant impeachment value as his conviction was entirely dependent on the jury's credibility determinations since there was no physical evidence; [2]-By failing to disclose the complainant's mother's written statement to the police which contradicted her trial testimony because it did not mention her suspicions that defendant had been sexually abusing anyone, the State deprived defendant of the opportunity to fully develop his defensive theory that she was lying; therefore, the trial court abused its discretion by denying defendant's motion for mistrial.

Outcome
Reversed and remanded.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Discovery &

Inspection > Brady Materials > Duty of Disclosure

Evidence > ... > Testimony > Credibility of Witnesses > Impeachment

Criminal Law & Procedure > Counsel > Prosecutors

HN1 **Brady Materials, Duty of Disclosure**

In order to comply with Brady, an individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in a case, including the police. Favorable evidence includes impeachment evidence. Under Brady, an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment.

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Mistrial

Criminal Law & Procedure > Trials > Motions for Mistrial

HN2 **Abuse of Discretion, Mistrial**

The appellate court reviews the denial of a motion for mistrial for an abuse of discretion, meaning that it must uphold the trial court's ruling if it was within the zone of reasonable disagreement. Only in extreme cases, when the prejudice is incurable, will a mistrial be required. In determining whether a trial court abused its discretion by denying a mistrial, the appellate court balances three factors: (1) the severity of the misconduct or prejudicial effect; (2) curative measures; and (3) the certainty of conviction or the punishment assessed absent the misconduct.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Appellate Review

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Duty of Disclosure

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Harmless Error

HN3 **Brady Materials, Appellate Review**

The disclosure requirements under *Tex. Code Crim. Proc. Ann. art. 39.14* parallel those under Brady and the policies that underlie it. Brady violations are treated differently. A reasonable probability that the undisclosed evidence would have resulted in a different outcome necessarily entails the conclusion that the suppression must have had a substantial and injurious effect or influence in determining the jury's verdict. Brady's three-prong test for reversible error is entirely different from *Tex. R. App. P. 44.2(a)*'s constitutional harmless error standard.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Brady Claims

Criminal Law & Procedure > Appeals > Reversible Error

HN4 **Brady Materials, Brady Claims**

To establish reversible error based on a Brady violation, an appellant must meet a three-prong test: (1) that the State failed to disclose evidence, regardless of the prosecution's good or bad faith; (2) that the withheld evidence is favorable to him; and (3) that the evidence is material in that there is a reasonable probability that had the evidence been disclosed, the trial's outcome would have been different. The remedy for a Brady violation is a new trial.

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review

HN5 **Reviewability, Preservation for Review**

The appellate court has a duty to ensure that a claim is properly preserved in the trial court before the appellate court addresses its merits.

Criminal Law & Procedure > Trials > Motions for Mistrial

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review

HN6 **Trials, Motions for Mistrial**

To preserve an error for review, the denial of the motion for mistrial should be sufficient when the defendant has obtained an adverse ruling from the trial court for the

relief requested.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Brady Claims

HN7[] **Brady Materials, Brady Claims**

To prevail under Brady, a defendant must show not only a failure to timely disclose favorable evidence but also that he was prejudiced by the tardy disclosure.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Appellate Review

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review

Criminal Law & Procedure > Trials > Continuances

Criminal Law & Procedure > Trials > Motions for Mistrial

HN8[] **Brady Materials, Appellate Review**

When an oral motion for continuance is made on the same *Tex. Code Crim. Proc. Ann. art. 39.14* basis as a motion for mistrial, the trial court rules on both, and a continuance would serve no useful purpose, a defendant does not need to file a written, sworn motion for continuance in order to preserve his Article 39.14-based denial-of-mistrial complaint for appellate review.

Criminal Law & Procedure > Preliminary Proceedings > Discovery & Inspection > Discovery by Defendant

HN9[] **Discovery & Inspection, Discovery by Defendant**

The legislature passed the Michael Morton Act to make criminal prosecutions more transparent by ensuring that criminal defendants can review many of the State's discovery materials above and beyond those that are purely exculpatory. The Act's purpose is to reduce the risk of wrongful conviction, which is high when criminal defendants are systematically denied information about the State's case until it is revealed at trial. In 2013, when the Texas Legislature unanimously passed the Act, it dramatically expanded the scope of discovery provided for in *Tex. Code Crim. Proc. Ann. art. 39.14*.

Criminal Law & Procedure > Preliminary Proceedings > Discovery & Inspection > Discovery by Defendant

Governments > Legislation > Effect & Operation > Amendments

HN10[] **Discovery & Inspection, Discovery by Defendant**

After the 2013 amendments, *Tex. Code Crim. Proc. Ann. art. 39.14(a)* provided that as soon as practicable upon a timely request from the defense, the State had to produce any offense reports and any written or recorded statements of the defendant or of a witness, in addition to any designated documents that contained evidence material to any matter involved in the action and in the State's possession, custody, or control.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Duty of Disclosure

HN11[] **Brady Materials, Duty of Disclosure**

The changes to *Tex. Code Crim. Proc. Ann. art. 39.14* create a general, continuous duty by the State to disclose before, during, or after trial any discovery evidence that tends to negate the defendant's guilt or to reduce the punishment he could receive. The prosecution is under a statutory duty to continually disclose exculpatory evidence.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Brady Claims

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Due Process

HN12[] **Brady Materials, Brady Claims**

The Michael Morton Act is essentially a state statutory extension of Brady which held that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Appellate Review

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Duty of Disclosure

HN13 **Brady Materials, Appellate Review**

Favorable evidence includes both exculpatory evidence and impeachment evidence. The Brady duty encompasses impeachment evidence as well as exculpatory evidence. The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. Impeachment evidence is evidence that disputes, disparages, denies, or contradicts other evidence. But materiality, a legal question that the appellate court reviews de novo, remains the linchpin of both *Tex. Code Crim. Proc. Ann. art. 39.14(a)* and Brady.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Brady Claims

HN14 **Brady Materials, Brady Claims**

To establish that requested evidence is material, a defendant must provide more than a possibility that it would help the defense or affect the trial. That is, to be considered material and subject to mandatory disclosure under *Tex. Code Crim. Proc. Ann. art. 39.14(a)*, such evidence must be indispensable to the State's case or must provide a reasonable probability that its production would result in a different outcome. Evidence is material if its omission would create a reasonable doubt that did not otherwise exist. False evidence is material when there is a reasonable likelihood that it would have affected the jury's judgment and that suppressed evidence is material if there is a reasonable probability that the trial's result would have been different if the suppressed evidence had been disclosed to the defense. A reasonable probability is one sufficient to undermine confidence in the outcome of the trial. Under Brady, the defendant need not show that he more likely than not would have been acquitted had the new evidence been admitted but rather only that the new evidence is sufficient to undermine confidence in the verdict.

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Appellate Review

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Brady Claims

HN15 **Brady Materials, Appellate Review**

A cumulative evaluation of the materiality of wrongfully withheld evidence is required rather than considering each piece of withheld evidence in isolation. Therefore, the appellate court analyzes an alleged Brady violation in light of all the other evidence adduced at trial. Sometimes, what appears to be a relatively inconsequential piece of potentially exculpatory evidence may take on added significance in light of other evidence at trial. In that type of case, a reviewing court should explain why a particular Brady item is especially material in light of the entire body of evidence.

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Judges: Before Sudderth, C.J.; Gabriel and Wallach, JJ. Opinion by Chief Justice Sudderth.

Opinion by: Bonnie Sudderth

Opinion

[*181] I. Introduction

Appellant ***Robert F. Hallman*** was indicted on one count

of continuous sexual abuse of children (Amy and Rita).[1] He was also indicted on two counts of aggravated sexual assault of a child under the age of 14, three counts of indecency with a child by contact, and one count of sexual assault of a child under the age of 17, but these charges involved only Amy.

Before trial, the State provided ***Hallman***'s defense counsel with a two-page notice of disclosure pursuant to *Texas Code of Criminal Procedure Article 39.14* that did not include 13 pages of discovery regarding a separate August 10, 2014 incident between ***Hallman*** and Kim, who is Amy and Rita's mother and was a key witness for the State.[2] Several witnesses testified about the August 10 incident during the guilt-innocence phase of trial, but the 13 pages were not disclosed to ***Hallman***'s defense counsel until **[**2]** the second day of the punishment phase of the trial, after the jury had acquitted him of the continuous-sexual-abuse count but convicted him of all of the remaining counts.

Hallman moved for a mistrial on the untimely disclosure. After the trial court denied ***Hallman***'s mistrial request, the jury assessed his punishment for each of the six counts at life imprisonment, and the trial court set those sentences to run concurrently.

In a single point, ***Hallman*** argues that the trial court abused its discretion by denying his request for a mistrial, complaining that the State violated *Article 39.14*'s discovery requirements. We agree and therefore sustain ***Hallman***'s sole point, reverse the trial court's judgment, and remand the case for a new trial.

II. Background

A. Timeline

Hallman lived off-and-on with his wife Kim and the children—Rita, Amy, their younger brother Ron, and their younger sister Kelly—until August 2014. During ***Hallman*** and Kim's tumultuous 20-year relationship, they took turns calling the police on each other.

In 2016, Amy moved out and lived with ***Hallman*** in his vehicle. Not long thereafter, Rita made a delayed outcry of sexual abuse by ***Hallman***, resulting in ***Hallman***'s arrest and Amy's return to **[**3]** Kim. Kim then filed for a divorce from ***Hallman***, which was finalized on September 9, 2016. Prior to ***Hallman***'s original trial date on Rita's allegations, Amy made a delayed outcry of sexual abuse by ***Hallman***, resulting in the trial's delay.

B. Testimony about the August 10, 2014 Incident during Guilt-Innocence

During the guilt-innocence phase of ***Hallman***'s trial, five witnesses were called to testify about the August 10 incident—Rita, Amy, Kim, the detective assigned to investigate the sexual abuse case, and one of the two officers who responded to the August 10 call. Depending upon which witness testimony is believed, the incident began either when Amy tried to leave with **[*182]** ***Hallman*** and Kim tried to stop her, or when ***Hallman*** hit Ron, Amy and Rita's younger brother. While the facts surrounding the incident provided the jury with insight into ***Hallman***'s relationship with Kim, Amy, and Rita, on appeal we will focus primarily on Kim's statement to the police and specifically whether she had mentioned her concerns that ***Hallman*** was sexually abusing Amy.

Fort Worth Police Sergeant Jonathan McKee, who investigated the sexual abuse allegations two years later, testified that on August 10, Rita had called **[**4]** the police to report the domestic disturbance and that ***Hallman*** was arrested as a result of that call.

Rita said that she had called the police that day because ***Hallman*** and Kim had gotten into an argument and had started fighting after ***Hallman*** hit Ron. Amy said that the altercation between ***Hallman*** and Kim began because Amy had wanted to leave with ***Hallman***, and when Kim had grabbed her in a way that cut off her air supply, ***Hallman*** had tried to defend her.

Kim stated that Rita and Ron had each called the police to report that ***Hallman*** was assaulting her, that she had "told the police on August the 10th, 2014, that [she] had suspicions that [***Hallman***] may have been sexually molesting [Amy]," and that an officer had pulled Amy aside separately and spoke with her.

But Amy said that while she "[p]ossibly" or "probably"

[1] We use pseudonyms for the complainants and their family members to protect the complainants' privacy.

[2] In addition to Kim's testimony, during the guilt-innocence phase of trial, the jury heard testimony from Rita, Amy, their older half-brother Martin, several police officers, a sexual assault nurse examiner, a forensic interviewer, a Child Protective Services investigator, and a community college program coordinator.

told the police that Kim had grabbed her in a way that kept her from being able to breathe, when she spoke with a CPS worker that day, she told the CPS worker "no" when asked if anyone had ever sexually abused her. Amy acknowledged that while Kim had been furious when Amy called ***Hallman*** to come get her, Kim had said nothing about being afraid that he was going to sexually abuse **[**5]** her. Rita also recalled speaking with the CPS worker and acknowledged that when the CPS worker asked her if anyone had ever touched her inappropriately, she had said, "No."

Crowley Police Detective Cesar Robles, who had worked for the Fort Worth Police Department on August 10, 2014, was called by the defense and testified that he was one of the two patrol officers who responded to the domestic disturbance call that day. He stated that Kim never told him or the other responding officer, Officer Oakley, that she was concerned that one of her children was being sexually abused and that if she had, they would have investigated further.

During cross-examination by the prosecutor, Detective Robles testified that he had no independent recollection about the incident except for his report. He did not remember what Amy, Kim, or ***Hallman*** looked like, and he did not recall whether they had been emotional. When asked whether in responding to the domestic disturbance, he would have gone over to any of the children involved and asked whether ***Hallman*** had touched them, Detective Robles replied, "No, ma'am," and agreed that such questioning would not have been appropriate. On redirect examination by the **[**6]** defense, Detective Robles agreed that Kim never mentioned concerns about sexual abuse. Officer Oakley was not called as a witness.

C. Disclosure during Punishment Phase

During the second day of the punishment phase of trial, ***Hallman***'s defense counsel notified the trial judge, who had not presided over the guilt-innocence phase of the trial, that the State had just disclosed new information to the defense, stating,

> **[*183]** [***F***]or the record, we filed a 39.14 motion for discovery of all offense reports. And just this morning, about five minutes ago, all it took was the State to electronically make this discovery available. And I received 13 pages of discovery we've never seen before dealing with the August 10th, 2014, incident, which the Court doesn't know, but it's been litigated throughout this trial.
>
> Among these records include a family violence packet we've never seen before. Among these records include an affidavit by C. Robles who has testified in this case, who we called and had no idea he provided an affidavit in connection with this case. Among these records include a statement by [Kim], one of the primary witnesses of the State, that we've never seen before in connection for this.
>
> . . . **[**7]** . And our client gave a statement in connection with the 2014 offense that we've never seen before and have never been provided. That is a violation of *39.14*, Judge.
> . . . .
> . . . We have made strategic decisions based upon the state of discovery that we received, and we have done so to our detriment because this information has not been provided to us, Judge.
> We don't have to specifically name which items we are entitled to because we don't know what the State has, and that's why we asked for everything. This isn't even gray. This is our client's statement. This is [Kim's] statement. This is a primary witness by the State that we've never been given this information of.
> . . . .
> And not only that, Your Honor, just now in looking at [Kim's] statement, there are inconsistencies with her testimony. So we were not allowed to question her. And her credibility -- our whole Defense was that it was the mother who put these children up to making these statements. And anything we could do to impeach her credibility was crucial to this case. And I'm looking at the statement and seeing that there are inconsistencies with her testimony.
>
> So it is crucially relevant to this, despite the fact that it involved **[**8]** a separate offense. The -- *38.37* allows them to go into the entire relationship between the defendant and the alleged victims, and that was a crucial part.

The prosecutor agreed that the August 10 offense had been litigated during the guilt-innocence phase of trial even though it was a separate offense. The prosecutor also stated,

> [W]e have had so many different hearings on discovery in this case. I am trying to comply and give them everything that I possibly can. I . . . when we have access to it, yes, it exists on TSP [the electronic discovery system]. They asked for the offense report. I made sure that they had the

> offense report. We -- they have asked for numerous things.[3] It was my understanding that **[*184]** they have already subpoenaed all this stuff from Fort Worth Police Department because we had a discovery hearing months ago where they had issued two, three, five different subpoenas for all these records. So I actually thought Defense had more than we actually had in this case.[4]
>
> But we're not trying to hide anything. This is dealing with a 2014 report. They specifically asked for the offense report. We've given that report over to them. This is an — they've asked for the family violence **[**9]** packet now. This is an eight-page family violence packet. I think if the remedy is for 39.14, if they feel that this is something they need to go into, then how much time do they need to go through for an eight-page report? I mean, I just — Your Honor knows because you've been a part of this case for the last two years. I am trying to be as transparent and give them everything that I can.

The trial court then ordered a two-hour recess so that the defense could review the new materials and stated that the defense would be allowed to recall any witnesses it felt necessary, including Kim, to conduct cross-examination **[**10]** based on the newly disclosed information. Defense counsel pointed out to the judge that the relevant cross-examination should have taken place during guilt-innocence, not during punishment, and requested a mistrial; the trial court replied that a request for mistrial was premature, adding,

> But if after you have reviewed those documents and if you feel like you need to recall [Kim], and we can even do that outside the presence of the jury, to see what her testimony would have been if **[*185]** she'd been cross-examined based upon that statement, at that time if you need to move for a mistrial, you may do that and the Court will address it.

At the conclusion of the two-hour recess, the prosecutor informed the trial court that the defense had requested

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[3] The record reflects that before, during, and after the trial's guilt-innocence phase, defense counsel had difficulty in obtaining access to information from the State. For example, regarding access to CPS files involving Amy, on August 14, 2018, the trial court held a hearing on ***Hallman***'s motion for continuance based on an April 2016 police report indicating that Amy had been taken into CPS custody at that time and interviewed. Two weeks later, the trial court held another hearing regarding information from CPS's files. Three days after that, on August 31, 2018, the trial court held a hearing with the CPS caseworker who had interviewed Amy on April 7, 2016; the caseworker testified that Amy did not disclose any sexual abuse by ***Hallman*** during that interview. Before voir dire, the prosecutor informed the trial court that the State had given ***Hallman***'s counsel "a new 39.14 discovery document" because "there was some new information that was scanned."

During the guilt-innocence phase of trial, ***Hallman***'s defense counsel objected to photographs of Amy and Rita at the ages they were when the alleged abuse occurred, stating, "That wasn't provided to us as far as I can tell." The prosecutor responded that Kim had provided the photographs around a week ago, "so I don't know if I provided it to [the defense] . . . since I've been gone for a week in Florida. But, I mean, I can certainly give [the defense] an opportunity to review them," and stated that the photos, albeit relevant, were "not evidence in the case as far as anything material to the case." The trial court delayed ruling on the objection to give the defense an opportunity to closely look at the photos. And when the defense objected to lack of notice about something that Amy called the "butt plug game" during her testimony, the prosecutor replied, "[I]t is in our notes and this has been open to the Defense." The trial court overruled the objection but noted,

> It's my understanding that the notice was general as to what activities had occurred and general as to the terminology to describe those activities. *And I will find that the notice that was given was adequate but only adequate, that a better practice would be to describe it more fully*, but I don't think the testimony, when matched against the notice given, would create any sort of surprise that would be unfair and does not comply with Michael Morton and the rest of the Code of Criminal Procedure and the statutory and case law requirements for disclosure. [Emphasis added.]

On the same day of the punishment trial that the State disclosed the 13 pages at issue, the State also provided another exhibit—an offense report from a 1999 burglary of a habitation that was alleged to support indicting ***Hallman*** as a habitual offender—to the defense.

[4] ***HN1***[↑] In order to comply with *Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)*, an individual prosecutor has a duty to learn of any "favorable" evidence known to the others acting on the government's behalf in a case, including the police. *Strickler v. Greene, 527 U.S. 263, 281, 119 S. Ct. 1936, 1948, 144 L. Ed. 2d 286, (1999)*. "Favorable" evidence includes impeachment evidence. *Id. at 280, 119 S. Ct. at 1948*. And under *Brady*, an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment. *Id. at 288, 119 S. Ct. at 1952*.

the family violence packet listed on the 2014 offense report that morning and that some of the previously undisclosed materials—a written statement by Kim and a written statement by ***Hallman***—were "copy and pasted verbatim" into Detective Robles's August 10, 2014 offense report, which defense counsel had and used during the trial's guilt-innocence phase.[5]

1. Detective Robles's August 10, 2014 Offense Report

The narrative in Detective Robles's August 10 **[**11]** offense report, which the parties used but did not offer into evidence during the guilt-innocence phase of the trial, stated that the 911 call details were that Kim and Ron had been hit in the face. ***Hallman*** told then-Fort Worth Police Officer Robles that Amy had wanted to leave with him and that Kim had followed them outside, grabbed Amy, and told her that she was not going anywhere and to go back inside the house. Amy told ***Hallman*** that she could not breathe, and ***Hallman*** grabbed Kim and tried to pull her away from Amy; he denied having hit Kim or anyone else in the process.

According to the report narrative, Kim told Officer Oakley that Amy had tried to go with ***Hallman*** to a residence where narcotics were being used and that she told Amy she could not go and grabbed her by the arm. After ***Hallman*** punched her right arm and twisted her arm behind her back, Kim used her left arm to hit him in the head, and when Ron saw what was going on, he ran up and bit ***Hallman*** on the back. Kim told Officer Oakley that ***Hallman*** hit Ron in the face and the stomach. When Officer Oakley spoke with a neighbor, the neighbor told him that ***Hallman*** and Kim had been arguing in the street "as they always do," ***Hallman*** **[**12]** hit Kim on her arm and twisted her arm behind her back, and Ron came up and did something to ***Hallman***'s back. ***Hallman*** then "threw his arm back, and it was unclear if there was any contact made to [Ron] or not."

According to the report's narrative, Kelly, Amy and Rita's younger sister, gave the same account to the police as Kim, while Amy gave the same account as ***Hallman***, but when asked for more details, Amy "got upset and went inside the residence." The report stated, "When [***Hallman***] was given his chance to write his statement, he advised that [Ron] did bite him, but he did not hit [Ron] unless it was by accident."

2. The Undisclosed Written Statements and Affidavit

Hallman's handwritten statement set out the following,

> Prior to having [Rita] call the police I made every effort to get away from [Kim] by going next door to my nei[ghbor's] house to wait on my sister to pick [up] me and . . . [Amy], [Kim] followed us next door and beg[a]n to grab on me and then grab on . . . [Amy] and she started having an asthma attack saying she couldn't breathe[.] I beg[a]n to pull [Kim] to free [Amy] so she could breathe[.] In the process [Ron] bit me in the back, he's eight no big deal but I did not strike **[**13]** [Ron][;] because of all the **[*186]** wrestling he got bumped but not struck by me intentionally to harm him.

Kim's handwritten statement set out the following,

> This morning [Amy] was trying to leave with [***Hallman***] to go with him to his sister['s] house to smoke marijuana openly[.] I refused to let he[r] go in that environment with him. [***Hallman***] told her to run away. I went after her to the neighbor[']s house and asked her to come back home and I took her by her arm at the wrist and tried to pull her back and that's when Mr. ***Hallman*** hit me in my right arm and twisted my arms behind my back and when [Ron] seen him hit me h[e] tried to protect me and bit him and in return Mr. ***Hallman*** hit him in the face and stomach[.]

Detective Robles's affidavit contained the same information as his offense report. The offense report and ***Hallman***'s and Kim's statements were admitted for record purposes as State's Exhibits 36, 37, and 38. These items, along with the family violence packet—which included a request for an emergency protective order—were admitted for record purposes as Defense Exhibit 28. The family violence packet includes the instruction, "If the officer feels like the situation is detrimental to **[**14]** the children in the home, the officer should make a report to CPS." Kim and Ron were listed as victims; Rita, Amy, Ron, and Kelly were listed as children who had seen the incident and were interviewed. Rita's, Amy's, and Kelly's demeanors were check-marked as "calm." Defense Exhibit 28 also contained ***Hallman***'s jail paperwork listing the charged offenses arising out of the August 10 incident as

[5] The offense report included a notation that ***Hallman*** was given a chance to write a statement, and it stated, "The Family Violence Packet was completed as well as an [emergency protective order], and turned in at the jail."

assault-bodily injury to a family member and injury to a child.

3. Arguments and Requested Relief

The defense argued that it had put on Detective Robles's testimony "believing that the only information he had was contained in his offense report," that a large part of the case centered on Kim's credibility, and that if it had had Kim's written statement to the police that did not mention sexual abuse—contrary to her claim that she had expressed her concerns to the officers—***Hallman*** would have had "a far different cross-examination" of her. The defense again requested a mistrial, stating that the State's failure to disclose under *Article 39.14* affected ***Hallman***'s trial strategy, including defense counsel's recommendation not to testify during guilt-innocence, and infringed on the defense's ability to effectively **[**15]** cross-examine Kim, Amy, and Detective Robles.

The defense requested, in the alternative, that the trial court allow the visiting judge who heard the guilt-innocence phase to preside or to grant a continuance for the trial judge to review the pertinent portions of the trial record. The defense did not file a sworn, written motion for continuance or recall Kim or any other witness outside the jury's presence to demonstrate what impeachment with the recently disclosed materials could have shown.

4. Trial Court's Ruling

The trial court denied the defense's requests, observing that after comparing the information contained in Detective Robles's offense report to ***Hallman***'s and Kim's written statements, "the essential information from those two statements is contained" in the offense report. The trial court elaborated by stating,

> [T]he Court has reviewed State's Exhibits 36 and 37 and 38. And for the record, all of these pertain to an extraneous offense, not the offense that the defendant is being tried for in this trial, but an extraneous offense from August 12th, 2014. And in that offense, the victim is [Kim] not the two victims in this case.
>
> **[*187]** And the Court has further reviewed what is contained **[**16]** in the report by the officer in State's Exhibit 36 and compared that to the written statements of ***Robert Hallman*** in State's Exhibit 37 and [Kim] in State's Exhibit 38. And the essential information from those two statements is contained on Page 4 of State's Exhibit 36.
>
> So the Court rules that for purposes of 39.14, that State's Exhibits 37 and 38 are not material in that their omission would not create a reasonable doubt that did not otherwise exist.
>
> . . . .
>
> So your motion for a mistrial is denied, and your motion for a continuance is denied.

When defense counsel urged reconsideration, the trial court responded, "And, once again, the Court is not ruling that everything contained in State's Exhibit 36 is not relevant and not material, but the Court is merely ruling that there is not additional information in State's Exhibits 37 and 38 that are not contained in State's Exhibit 36, and that is the Court's ruling." ***Hallman*** did not file a motion for new trial or file a formal bill of exception. *See Tex. R. App. P. 21.2*, *33.2*.

III. Discussion

Hallman argues in his sole point that the trial court abused its discretion by denying his motion for mistrial because the State violated *Article 39.14*'s discovery requirements.[6] The State responds **[**17]** that any failure to timely disclose was harmless because the evidence was not "material."

A. Standard of Review

HN2[⬆] We review the denial of a motion for mistrial for an abuse of discretion, meaning that we must uphold the trial court's ruling if it was within the zone of reasonable disagreement. *Archie v. State, 221 S.W.3d 695, 699-700 (Tex. Crim. App. 2007)*; *Marchbanks v. State, 341 S.W.3d 559, 561 (Tex. App.—Fort Worth 2011, no pet.)*. Only in extreme cases, when the prejudice is incurable, will a mistrial be required. *Marchbanks, 341 S.W.3d at 561, 563* (reviewing *Brady* complaint). Generally, in determining whether a trial court abused its discretion by denying a mistrial, we

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[6] In his sole point, ***Hallman*** also argues that the trial court also abused its discretion by ruling on the motion for mistrial when that judge did not preside over the guilt-innocence phase of trial and urges us to reconsider the standard of "materiality" under *Article 39.14(a)*, referring us to ***Watkins v. State, 554 S.W.3d 819 (Tex. App.—Waco 2018, pet. granted)***. Based on our resolution below, we do not reach these arguments or the State's responses to them. *See* ***Tex. R. App. P. 47.1***.

balance three factors: (1) the severity of the misconduct (prejudicial effect); (2) curative measures; and (3) the certainty of conviction or the punishment assessed absent the misconduct. *Hawkins v. State, 135 S.W.3d 72, 77 (Tex. Crim. App. 2004)*; *Mosley v. State, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998)* (op. on reh'g).

But we will not apply these factors here ***HN3***[↑] because the disclosure requirements under *Article 39.14* parallel those under *Brady* and the policies that underlie it. And *Brady* violations are treated differently. *See Kyles v. Whitley, 514 U.S. 419, 435, 115 S. Ct. 1555, 1566, 131 L. Ed. 2d 490 (1995)* (explaining that a reasonable probability that the undisclosed evidence would have resulted in a different outcome necessarily entails the conclusion that the suppression must have had a substantial and injurious effect or influence in determining the jury's verdict); *Hampton v. State, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002)* (stating that *Brady* ***[**18]*** 's three-prong test for reversible error is entirely different from **[*188]** *Texas Rule of Appellate Procedure 44.2(a)*'s constitutional harmless error standard).

HN4[↑] To establish reversible error based on a *Brady* violation, an appellant must meet a three-prong test: (1) that the State failed to disclose evidence, regardless of the prosecution's good or bad faith; (2) that the withheld evidence is favorable to him; and (3) that the evidence is material in that there is a reasonable probability that had the evidence been disclosed, the trial's outcome would have been different. *See Pena v. State, 353 S.W.3d 797, 809 (Tex. Crim. App. 2011)* (setting out *Brady* three-prong test). The remedy for a *Brady* violation is a new trial. *Ex Parte Miles, 359 S.W.3d 647, 664 (Tex. Crim. App. 2012)*.

We will apply the *Brady* three-prong test in our analysis of ***Hallman***'s *Article 39.14*-based complaint. *See Branum v. State, 535 S.W.3d 217, 224-25 (Tex. App.—Fort Worth 2017, no pet.)*; *see also Ray v. State, No. 10-17-00394-CR, 2018 Tex. App. LEXIS 8265, 2018 WL 4926215, at *5-6* (Tex. App.—Waco Oct. 10, 2018, pet. ref'd) (mem. op., not designated for publication) (considering *Brady* and *Article 39.14* claims together but holding that failure to request a continuance waived any alleged violation under either).

B. Preservation of Error

We observe at the outset that there is an unraised issue of whether a motion for continuance that complies with the Texas Code of Criminal Procedure's requirements—i.e., that it be in writing and sworn—is required to preserve an *Article 39.14* complaint. **[**19]** *See Ray, 2018 Tex. App. LEXIS 8265, 2018 WL 4926215, at *7 n.3* (Gray, C.J., concurring) (setting out steps a careful attorney should take "[u]ntil the issue of whether a formal motion for continuance is necessary to preserve an issue regarding whether the State failed to comply with disclosure under *article 39.14*" is decided); *Prince v. State, 499 S.W.3d 116, 121 (Tex. App.—San Antonio 2016, no pet.)* (holding that by failing to file a sworn, written motion for continuance, the appellant failed to preserve error on his *Article 39.14* or *Brady* complaints upon which his denial-of-continuance argument was based but addressing appellant's denial-of-mistrial complaint separately); *Apolinar v. State, 106 S.W.3d 407, 421 (Tex. App.—Houston [1st Dist.] 2003)* ("When evidence withheld in violation of *Brady* is disclosed at trial, the defendant's failure to request a continuance waives the error or at least indicates that the delay in receiving the evidence was not truly prejudicial."), *aff'd on other grounds*, *155 S.W.3d 184 (Tex. Crim. App. 2005)*; *see also Ahn v. State, No. 02-17-00004-CR, 2017 Tex. App. LEXIS 11411, 2017 WL 6047670, at *6 n.4* (Tex. App.—Fort Worth Dec. 7, 2017, no pet.) (mem. op., not designated for publication) ("[T]o preserve a *Brady* complaint when *Brady* evidence is disclosed at trial, a defendant generally must request a continuance."). Because error preservation is a systemic requirement, we must independently review this unraised issue; ***HN5***[↑] we have a duty to ensure that a claim is properly preserved in the trial court before we **[**20]** address its merits. *Darcy v. State, 488 S.W.3d 325, 327-28 (Tex. Crim. App. 2016)*.

The record reflects that ***Hallman*** moved for a mistrial on the basis of *Article 39.14* regarding the undisclosed evidence and moved, in the alternative and on the same basis, for a continuance but did not file a written, sworn motion for that continuance. The trial court granted ***Hallman*** two hours to review the undisclosed 13 pages. ***Hallman*** complains only of the denial of his motion for mistrial on appeal.

We find some of the reasoning in the concurring opinion in *Ray* helpful to our error-preservation determination here. In the concurrence to *Ray*, Chief Justice **[*189]** Gray noted that a request for a continuance requires certain procedural requirements "that are simply not present in a motion for mistrial" and that a defendant should not be required to seek a continuance as a prerequisite to preserve error as to the denial of a mistrial when the State has failed to comply with

statutorily required discovery. Ray 2018 Tex. App. LEXIS 8265, 2018 WL 4926215, at *7 (Gray, C.J., concurring). HN6[] That is, the denial of the motion for mistrial should be sufficient when the defendant has obtained an adverse ruling from the trial court for the relief requested, per *Texas Rule of Appellate Procedure 33.1*, and "it should not be the defendant's burden to properly request a continuance and thus **[**21]** convert the issue from a failure to grant a mistrial to a failure to grant a continuance." 2018 Tex. App. LEXIS 8265, [WL] at *7 & n.3. We agree, particularly under the circumstances here, under which the granting of a continuance would not have allowed the defense to revisit the relevant guilt-innocence portion of trial to prepare and adjust any trial strategies. *See* Little v. State, 991 S.W.2d 864, 867 (Tex. Crim. App. 1999) HN7[] (explaining that to prevail under *Brady*, a defendant must show not only a failure to timely disclose favorable evidence but also that he was prejudiced by the tardy disclosure).

We hold that HN8[] when an oral motion for continuance is made on the same Article 39.14 basis as a motion for mistrial, the trial court rules on both, and a continuance would serve no useful purpose, a defendant does not need to file a written, sworn motion for continuance in order to preserve his Article 39.14-based denial-of-mistrial complaint for our review. *Cf.* Branum, 535 S.W.3d at 226-27.[7]

[7] One of the Article 39.14 complaints raised by the defendant in *Branum* was the State's late designation of an expert witness, which was made less than 20 days before trial. 535 S.W.3d at 222, 226-27. Regarding that issue, we held that because the defense had failed to request a continuance based on the late designation, this rendered any error by the trial court harmless, but we also noted that the defendant could have reasonably anticipated that the witness from the medical examiner's office would testify in the intoxication manslaughter trial. Id. at 226-27; *see also* Moore v. State, No. 02-17-00277-CR, 2018 Tex. App. LEXIS 6510, 2018 WL 3968491, at *10 (Tex. App.—Fort Worth Aug. 16, 2018, pet. ref'd) (mem. op., not designated for publication). In *Moore*, the prosecutor thought that the nine-page sexual-assault exam report of a fourth sexual abuse victim (not one of the complainants) had been made available via TechShare—the system through which the State electronically shares documents with defense attorneys—but the failure to have "click[ed] on a button" was discovered during the trial's punishment phase. 2018 Tex. App. LEXIS 6510, 2018 WL 3968491, at *1, *10. Defense counsel was allowed to review the report during a pause in the proceedings and then made his objections but did not request additional time to review the document, and he cross-examined the witness but did not try to impeach her testimony with the disputed document. 2018 Tex. App. LEXIS 6510, [WL] at *10. We held that the defendant had waived his Michael Morton Act complaint because he did not request a continuance. *Id.* Both of these cases are distinguishable from the facts before us: in Branum, the late designation occurred before trial, when a continuance could have actually been useful to the defense, and in Moore, the information was disclosed with regard to a punishment witness during the punishment phase of trial—again, when a continuance could have actually been useful to the defense.

C. Texas Code of Criminal Procedure Article 39.14, Branum, and Watkins

HN9[] The Legislature passed the Michael Morton Act to make criminal prosecutions more transparent by ensuring that criminal defendants can review many of the State's discovery materials above and beyond those that are purely exculpatory. Love v. State, No. 02-19-00052-CR, 600 S.W.3d 460, 2020 Tex. App. LEXIS 2518, 2020 WL 1466311, at *1 (Tex. App.—Fort Worth Mar. 26, 2020, no pet. h.); *see* Gerald S. **[**22]** Reamey, *The Truth Might Set You Free: How the Michael Morton Act Could Fundamentally Change Texas Criminal **[*190]** Discovery, or Not*, 48 Tex. Tech L. Rev. 893, 897 (2016) ("Prior to 2014, Texas discovery law . . . inhibited the ability of the criminally accused to obtain useful material from the [S]tate in a timely fashion."). That is, the Act's purpose is to reduce the risk of wrongful conviction, which is high when criminal defendants "are systematically denied information about the [S]tate's case until it is revealed at trial." Rearney, 48 Tex. Tech. L. Rev. at 899-900 (explaining that after serving almost 25 years of a life sentence, Morton was exonerated by evidence that had previously been undisclosed due to prosecutorial misconduct).

Accordingly, in 2013, when the Texas Legislature unanimously passed the Act, it dramatically expanded the scope of discovery provided for in Texas Code of Criminal Procedure Article 39.14. *See* Act of May 14, 2013, 83rd Leg., R.S., ch. 49, § 2, 2013 Tex. Gen. Laws 106, 106-07; *see also* Branum, 535 S.W.3d at 224 ("Article 39.14 is a comprehensive discovery statute that provides limited authorization for a trial court to order discovery . . . .").

Before the 2013 amendments, Article 39.14(a) provided that if the defendant filed a motion showing good cause, the trial court was required to order the State before or during trial to **[**23]** produce documents designated in the motion, including the defendant's written statement

(but not written statements of witnesses or work product) as long as those documents contained evidence material to any matter involved in the action that was in the State's possession, custody, or control, as set out in full below:

> Upon motion of the defendant showing good cause therefor and upon notice to the other parties, except as provided by Article 39.15, the court in which an action is pending shall order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making **[**24]** the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

Act of May 18, 2009, 81st Leg., R.S., ch. 276, § 2, 2009 Tex. Gen. Laws 732, 733 (amended 2013).

HN10[] After the 2013 amendments, which became effective on January 1, 2014, Article 39.14(a) provided that as soon as practicable upon a timely request from the defense, the State had to produce any offense reports and any written or recorded statements of the defendant or of a witness, in addition to any designated documents (excluding work product) that contained evidence material to any matter involved in the action and in the State's possession, custody, or control, as set out in full below:

> Subject to the restrictions provided by Section 264.408, Family Code, and **[*191]** Article 39.15 of this code, as soon as practicable after receiving a timely request from the defendant the state shall produce and permit the inspection **[**25]** and the electronic duplication, copying, and photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state. The state may provide to the defendant electronic duplicates of any documents or other information described by this article. The rights granted to the defendant under this article do not extend to written communications between the state and an agent, representative, or employee of the state. This article does not authorize the removal of the documents, items, or information from the possession of the state, and any inspection shall be in the presence of a representative of the state.

Tex. Code Crim. Proc. Ann. art. 39.14(a).

The amendments **[**26]** also added twelve new subsections, two of which—subsections (h) and (k)—are also pertinent to the issue before us. *See id.* art. 39.14(h), (k). Subsection (h), a codified *Brady* provision, states, "Notwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged." *Id.* art. 39.14(h). Subsection (k), which requires ongoing disclosure, states, "If at any time before, during, or after trial the state discovers any additional document, item, or information required to be disclosed under Subsection (h), the state shall promptly disclose the existence of the document, item, or information to the defendant or the court." *Id.* art. 39.14(k).

HN11[] The recent changes to Article 39.14 create a general, continuous duty by the State to disclose before, during, or after trial any discovery evidence that tends to negate the defendant's guilt or to reduce the punishment he could receive. Ex parte Martinez, 560 S.W.3d 681, 702 (Tex. App.—San Antonio 2018, pet. ref'd); Cynthia

E. Hujar Orr & ***Robert*** G. Rodery, *The Michael Morton Act: Minimizing Prosecutorial Misconduct*, 46 St. Mary's L.J. 407, 414 (2015) (stating **[**27]** that "for the first time, the prosecution is under a statutory duty to *continually* disclose exculpatory evidence").

HN12[↑] The Michael Morton Act is essentially a state statutory extension of *Brady*, in which the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S. Ct. at 1196-97 (observing that society wins not only when the guilty are convicted but also when criminal trials are fair and that our judicial system suffers when any accused is treated unfairly); *see* United States v. Agurs, 427 U.S. 97, 104, 96 S. Ct. 2392, 2398, 49 L. Ed. 2d 342 (1976) ("A fair analysis of the holding in Brady indicates that implicit in the requirement of materiality is a concern that **[*192]** the suppressed evidence might have affected the outcome of the trial.");[8] Pena v. State, 353 S.W.3d 797, 809 (Tex. Crim. App. 2011) ("*Brady* essentially created a federal constitutional right to certain minimal discovery.").

By instituting what amounts to a legislative "Open File" policy in advance of trial, the Michael Morton Act sets out a methodology to enhance the fairness of the trial process and to prevent wrongful convictions by giving the defense **[**28]** access to information the existence of which it might otherwise have to guess. *See generally* Ex parte Temple, No. WR-78,545-02, 2016 Tex. Crim. App. Unpub. LEXIS 1050, 2016 WL 6903758, at *3 n.20 (Tex. Crim. App. Nov. 23, 2016) (not designated for publication) (recognizing that "[t]he Michael Morton Act created a general, ongoing discovery duty of the State to disclose before, during, or after trial any evidence tending to negate the guilt of the defendant or reduce the punishment the defendant could receive");[9] Young v. State, 591 S.W.3d 579, 598 (Tex. App.—Austin 2019, pet. ref'd) ("When the [L]egislature passed the Michael Morton Act, it amended article 39.14 of the Code of Criminal Procedure to expand the availability and scope of discovery that must be produced by the State."); Murray v. State, No. 08-16-00185-CR, 2018 Tex. App. LEXIS 2471, 2018 WL 1663882, at *4 (Tex. App.—El Paso Apr. 6, 2018, pet. ref'd) (mem. op., not designated for publication) ("The Michael Morton Act changed Texas law related to discovery in criminal cases in order to prevent wrongful convictions by ensuring defendants have access to the evidence in the State's possession so they may prepare a defense."). *But see* Agurs, 427 U.S. at 111, 96 S. Ct. at 2401 (rejecting suggestion that prosecutor has a constitutional duty to deliver his entire file to defense counsel).

HN13[↑] "Favorable evidence" includes both exculpatory evidence and impeachment evidence. Chaney, 563 S.W.3d at 266; *see* Strickler, 527 U.S. at 280, 119 S. Ct. at 1948 ("We have since held . . . that the [*Brady*] duty encompasses impeachment evidence **[**29]** as well as exculpatory evidence."); *see also* Kyles, 514 U.S. at 437, 115 S. Ct. at 1567 ("[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."). Impeachment evidence is evidence that "disputes, disparages, denies, or contradicts other evidence." Chaney, 563 S.W.3d at 266. But materiality, a legal question that we review de novo, remains the linchpin of both Article 39.14(a) and *Brady*. *See* Tex. Code Crim. Proc. Ann. art. 39.14(a); Chaney, 563 S.W.3d at 264; *see also* Strickler, 527 U.S. at 282, 119 S. Ct. at 1948.

[*193] ***HN14***[↑] "To establish that requested evidence is material, a defendant must provide more than a possibility that it would help the defense or affect the trial." Branum, 535 S.W.3d at 224. That is, to be considered material and subject to mandatory

[8] *Agurs* eliminated the requirement that a request to disclose exculpatory evidence be made. 427 U.S. at 107, 96 S. Ct. at 2399 ("[I]***f*** the evidence is so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce, that duty should equally arise even if no request is made."); *see* Ex parte Chaney, 563 S.W.3d 239, 266 (Tex. Crim. App. 2018) (citing *Agurs* for the proposition that the defense need not request disclosure of *Brady* evidence because the State's duty to disclose such evidence is an affirmative one).

[9] In *Temple*, the prosecutor did not turn over evidence that she believed to be irrelevant. 2016 Tex. Crim. App. Unpub. LEXIS 1050, 2016 WL 693758, at *3 (noting that a prosecutor who errs on the side of withholding evidence from the defense runs the risk of violating *Brady* and holding that prosecutor's misconception regarding her duty under *Brady* was of enormous significance). Defense counsel had requested copies of the offense reports in the case—approximately 1,400 pages, some of which contained favorable evidence that would have allowed a more effective presentation of an alternate suspect—but was denied access to them. *Id.* The court opined that the Michael Morton Act "was created to avoid problems exactly like those that arose in this case." 2016 Tex. Crim. App. Unpub. LEXIS 1050, [WL] at *3 n.20.

disclosure under Article 39.14(a), such evidence must be indispensable to the State's case or must provide a reasonable probability that its production would result in a different outcome. Id. at 225; see Ehrke v. State, 459 S.W.3d 606, 611 (Tex. Crim. App. 2015) ("Evidence is material if its omission would create 'a reasonable doubt that did not otherwise exist . . . ." (quoting Agurs, 427 U.S. at 112, 96 S. Ct. at 2402)); see also Chaney, 563 S.W.3d at 263-64, 266 (stating that false evidence is material when there is a "reasonable likelihood" that it would have affected the jury's judgment and that suppressed evidence is material if there is a reasonable probability that the trial's result would have **[**30]** been different if the suppressed evidence had been disclosed to the defense). "A reasonable probability is one sufficient to undermine confidence in the outcome of the trial." Chaney, 563 S.W.3d at 266; see Wearry v. Cain, 136 S. Ct. 1002, 1006, 194 L. Ed. 2d 78 (2016) (stating, under *Brady*, that the defendant need not show that he "more likely than not" would have been acquitted had the new evidence been admitted but rather "only that the new evidence is sufficient to 'undermine confidence' in the verdict").

HN15[↑] A cumulative evaluation of the materiality of wrongfully withheld evidence is required rather than considering each piece of withheld evidence in isolation. Wearry, 136 S. Ct. at 1007 (citing Kyles, 514 U.S. at 441, 115 S. Ct. at 1569). Therefore, "[w]e analyze an alleged *Brady* violation 'in light of all the other evidence adduced at trial.'" Pitman v. State, 372 S.W.3d 261, 264 (Tex. App.—Fort Worth 2012, pet. ref'd) (quoting Hampton, 86 S.W.3d at 612-13). And "[s]ometimes, what appears to be a relatively inconsequential piece of potentially exculpatory evidence may take on added significance in light of other evidence at trial." Hampton, 86 S.W.3d at 613. In that type of case, "a reviewing court should explain why a particular *Brady* item is especially material in light of the entire body of evidence." *Id.*

In *Branum*, our most recent published opinion on the subject of materiality under the Michael Morton Act,[10] the defendant was charged with intoxication manslaughter **[**31]** after she "T-boned" another driver when she ran a red light; with regard to Article 39.14, she sought production of the deceased's phone.[11] 535 S.W.3d at 220-21, ***[*194]*** 223-25. The trial court reviewed the phone's contents *in camera* and held that they disclosed nothing relevant or material. Id. at 222. The phone's contents were not made a part of the appellate record, id. at 221 n.5, but the State established that the phone was not in use at the time of the accident. Id. at 224. We held that Branum's assertion that the phone "could have" revealed significant data was nothing more than a mere possibility, insufficient for purposes of mandatory disclosure under Article 39.14(a), and that she had failed to meet her burden to show that the records were essential or material to a matter involved in the case. Id. at 225.

The parties direct us to *Watkins*, a drug possession case now pending in the Texas Court of Criminal Appeals. In that case, the Waco court declined the appellant's invitation to reconstrue the meaning of "material" in the Michael Morton Act. *554 S.W.3d at 824 n.1* (op. on reh'g). While acknowledging that the Legislature anticipated and probably intended a "sea change in criminal discovery," the court held that it was not at liberty to disregard that interpretation because the Legislature did not change the term **[**32]** "material" in the existing statute, which had already been interpreted by the state's highest criminal court. *Id.*

The complaint in *Watkins* was that the State had

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[10] We addressed the Michael Morton Act in Coleman v. State, 577 S.W.3d 623, 634 (Tex. App.—Fort Worth 2019, no pet.), but in the context of disclosure of a confidential informant's identity. We also addressed the Michael Morton Act in Moody v. State, 551 S.W.3d 167, 171-72 (Tex. App.—Fort Worth 2017, no pet.), but in the context of video recordings that were no longer in existence at the time the defendant requested them. And we addressed it in *Love*, but in the context of whether the trial court abused its discretion by disqualifying the appellant's retained defense counsel after he improperly gave his copy of the State's discovery to the appellant's wife. 2020 Tex. App. LEXIS 2518, 2020 WL 1466311, at *1, *11, *13 (noting that the Act does not have any mechanisms for dealing with discovery violations on defense counsel's part).

[11] In addition to her Article 39.14 complaints about the deceased's phone and the late expert designation, the defendant in *Branum* also complained that she did not receive the bar manager's statement to the Texas Alcoholic Beverage Commission. 535 S.W.3d at 225-26. We held that even if TABC were considered to be the "State" for Article 39.14's purposes, applying the nonconstitutional harm analysis under ***Texas Rule of Appellate Procedure 44.2(b)***, Branum did not show that failing to order the State to disclose the statement affected her substantial rights by denying her access to evidence that would have changed the trial's outcome in her favor when another witness testified to the same facts, without objection, as the bar manager: Branum's time of arrival at the bar, her approximate number of drinks, and her time of departure. *Id.*

violated *Article 39.14* by failing to provide penitentiary packets and booking sheets before trial and that the trial court had therefore abused its discretion by admitting those items into evidence during the trial's punishment phase. *Id. at 820*. Applying the pre-Michael Morton Act definition of materiality, the court held that because the State had provided notice of its intent to produce evidence of the convictions under *Article 37.07* to establish the enhancement paragraphs of the indictment and to seek a longer sentence and because the appellant had pleaded true to the enhancement paragraphs at the punishment hearing, there was no reasonable probability that the trial's outcome would have been different or that his sentence would have been reduced if the exhibits had been produced before trial. *Id. at 822*.

The Austin court has also recently considered materiality under the pre-Michael Morton Act standard. *See Young, 591 S.W.3d at 597-98*. In *Young*, the defendant, an attorney, was charged with forgery, theft, and money laundering after his client died and left a holographic will purporting to name **[**33]** the attorney as his sole beneficiary two months after they met. *Id. at 585-86, 589*. On appeal, the attorney complained that the State had failed to disclose information under *Brady* and *Article 39.14* that exculpated him and inculpated someone else as the actual offender or as someone of "greater blameworthiness" and that could have led to the discovery of other exculpatory information. *Id. at 597*. He contended that the State had improperly suppressed evidence from, and pertaining to, the ex-wife of an alleged accomplice, and he attached her affidavit to his motion for new trial. *Id. at 598-99*.

The trial court held a hearing on the motion for new trial and concluded that (1) the defendant had failed to prove that any of the information that he did not already have showed a reasonable probability of a different outcome at trial based on the credibility (and lack thereof) of the previously undisclosed witness and (2) the witness's statements, even if they had been **[*195]** disclosed and used effectively, would not have made a difference between conviction and acquittal. *Id. at 602-03*. The Austin court reviewed the record and the trial court's findings of fact and conclusions of law, held that the record supported those findings, and accordingly overruled the *Brady* **[**34]** /Michael Morton issue. *Id. at 603*.

D. Guilt-Innocence Evidence

Because we must analyze the alleged violation in light of all the other evidence adduced at trial, *see Pitman, 372 S.W.3d at 264*, we have reviewed the entire record of the guilt-innocence phase of the trial. Rita, Amy, Kim, and Martin testified about ***Hallman*** and Kim's turbulent relationship, and Rita and Amy testified about various alleged acts of sexual abuse perpetrated by ***Hallman*** from 2010 to 2014,[12] starting when each was around twelve years old. Rita, Amy, and Kim testified about ***Hallman***'s grooming actions[13] and his sabotaging Kim's relationships with Rita and Amy, but all three acknowledged that sometimes ***Hallman***—not Kim—called the police or CPS. While Kim said that she talked with Rita and Amy about "stranger danger" and sexual abuse awareness but did not tell them that she had been sexually abused by her stepfather, Amy testified that Kim had told them about being sexually abused.

Kim testified that ***Hallman*** was different with Amy than with anyone else and treated Amy like a wife, stating

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[12] Kim and ***Hallman*** would fight and then Kim and the children would move; ***Hallman*** would move in with them again later. After his August 10, 2014 arrest, ***Hallman*** no longer lived with them, but he still had visits with the children "after the CPS case was cleared and closed."

[13] The forensic interviewer testified that "grooming" is a term used to describe how a sexual abuse perpetrator gains access to his or her victim with the purpose of developing some kind of trust or relationship so that when the perpetrator decides to act, the victim is conflicted about telling. Threats would also fall into the grooming category, i.e., when a perpetrator tells a child that if the child discloses the abuse, someone would get hurt or something bad would happen to the child or the child's family. She said that other examples of grooming included using religion to justify the abuse and buying things for the victim "like lingerie, bras, sex toys, things like that."

Rita said that if she or Amy wanted something from ***Hallman***, he would tell them "to do things like to him, or [they] had to let him see one of [their] private parts if [they] wanted something like clothes or shoes or anything. And . . . he would also have [them] smoke weed with him." Rita and Amy said that he showed favoritism to them over Ron or Kelly, the household's two younger children; Kim confirmed that he treated Rita and Amy more generously than their younger siblings. Kim said that ***Hallman*** would take Rita and Amy to buy lingerie when Rita was fourteen or fifteen years old and Amy was almost thirteen years old. Amy said that when she was bullied at school, ***Hallman*** "would just give [her] things," including words of encouragement, which drew her to him, and that he warned her that if she told anyone about the sexual abuse, he would go to jail. Amy also stated that ***Hallman*** told her that "God said it's nothing wrong with what he's doing."

during her direct examination,

> He kept her close to him all the time. He did not allow her to leave out of his sight. He did not allow her to leave and go anywhere with me. **[**35]** He would have her outside in the truck with him at -- late at night on school nights, which I complained tremendously about. He said he was spending time with her. He would have her to walk outside in a -- her --just her robe to get in the truck with him, which I told him that was very appropriate [sic]. When she would spend the night when he was not in our -- residing in the home and he was residing with his sister, he would sleep in the room with her. And I had objections to **[*196]** that, and I told him that she could no longer go and spend the night, neither could the other two younger children because that was inappropriate for him to sleep in the room.

During Kim's cross-examination, she elaborated as follows,

> Q. And, in fact, you thought that there were things going on that concerned you, such as [***Hallman***] going out to the car late in the evening with [Amy]. Is that what you said?
> A. I didn't say late in the evening. I said late at night at 1 o'clock, 2 o'clock in the morning.
> Q. Okay. And that would be very strange, wouldn't it?
> A. Yes.
> Q. Okay. That would definitely be inappropriate from him to take your daughter out at 1:00 in the morning to sit in a car, wouldn't it?
>
> A. He wouldn't actually **[**36]** take her out. He would call her to come out to the car with him.
> Q. Okay. And you didn't go out there to see what was going on?
> A. Yes, I did on -- on a few occasions.
> Q. Just a few?
> A. Yes, to see what was going on.
> Q. And --
> A. They'll be just sitting in the car, and I would make her come in. But with his rage and fits and the abuse that I would have to suffer from whatever I -- whatever instruction I would give the kids or directions, you know, I would tell them to come in, but he would tell them they didn't have to.

Kim did not call the police regarding those incidents but acknowledged that she had called the police on more than one occasion before, and that if she had thought something sexual was going on in the car between ***Hallman*** and Amy, that would have warranted calling the police. Two weeks after ***Hallman*** was arrested in 2016, Kim retrieved his truck, which had all of Amy's clothing in it as well as ***Hallman***'s phone and some of his possessions, from the parking lot. Kim said that she did not call the police and tell them about ***Hallman***'s possessions because they were still married at the time so it "was community property." She drove the truck for two weeks and then returned it to **[**37]** CarMax, where ***Hallman*** had bought it.[14] She left all of ***Hallman***'s belongings in the car when she returned it to CarMax.

Kim said that she had asked ***Hallman*** several times if "anything was going on with him" and Amy but that he told her that she was crazy and that he had threatened that if she ever sent him to jail, he would kill her.

Amy and Rita were sent to counseling by CPS in 2015 because they had witnessed the 2014 assault, and Kim said that she told Amy's counselor that she was concerned about Amy's relationship with ***Hallman***. Kim said that she did not know how to bring up the topic of sexual abuse, stating that she told the counselor that Amy and ***Hallman*** "had like an enmeshment type of relationship" in which Amy was losing her identity.

Amy denied that she and Rita had ever discussed Rita's sexual abuse allegations against ***Hallman*** before Amy made her outcry, but she said that she had witnessed **[*197]** ***Hallman*** sexually abusing Rita in the bedroom that she and Rita had shared. Kim admitted that she did not allege sexual abuse in the divorce petition that she filed against ***Hallman*** in May 2016, a couple of months after Rita made her outcry, even though she specifically referenced domestic abuse. **[**38]**

Rita testified that Kim did not tell her what to say while testifying and that she had told the truth. When asked whether she had told Rita and Amy to lie, Kim said, "I would never tell them to lie on [***Hallman***]. I would never lie on something that serious." Kim also testified about her medical[15] and work history, which she said kept her

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[14] Officer McKee testified that he did not know what had happened to ***Hallman***'s vehicle after ***Hallman***'s arrest but that Amy was found waiting in the vehicle for ***Hallman*** on the day of the arrest. Officer McKee acknowledged that "[a]nything is possible" when asked on cross-examination that there might possibly have been evidence of sexual assault when ***Hallman*** and Amy had been living in the vehicle.

[15] Kim testified that she took 26 different medications, for lupus, high blood pressure, heart problems, rheumatoid arthritis, bipolar disorder, epileptic seizures, lymphatic

from being aware of what happened at home, and she denied that she had ever been abusive to ***Hallman***.

Officer McKee investigated Rita's delayed outcry in March 2016, four days after Amy left home to live with ***Hallman***. He set up Rita's forensic interview and sexual assault exam and obtained an arrest warrant for ***Hallman***, which was executed on April 7, 2016, and Amy was returned to Kim.

Officer McKee was notified on February 12, 2017—the day before ***Hallman***'s trial on Rita's allegations was supposed to begin—that Amy had made an outcry, and he set up a forensic interview and sexual assault exam for her.[16] Officer McKee testified that because Rita and Amy had moved multiple times, he did not think it was feasible to collect physical evidence from the homes where they had lived. He also did not seek a search warrant for ***Hallman***'s phone because he "had no reason **[**39]** to believe that there was evidence of a crime on his phone."

Theresa Fugate, a sexual assault nurse examiner (SANE) at Cook Children's Medical Center, testified that she conducted Rita's sexual assault examination on March 23, 2016, and Amy's sexual assault examination on February 17, 2017, and found no physical evidence in either exam. Fugate explained that for nonacute sexual assault (assault occurring 120 hours or more before the exam), there was not likely to be any DNA evidence and that physical injury to the female sexual organ was rare because it was an area meant to stretch. Fugate also testified about what Rita and Amy had told her about ***Hallman***'s alleged acts of sexual abuse.

Samantha Torrance, a forensic interviewer at Alliance for Children, Tarrant County's children's advocacy center, testified about how a forensic interview is conducted (nonleading and nonsuggestive questions in vocabulary adjusted to the child's level of development) and about the importance of sensory and peripheral details in a child's account of abuse.[17] Torrance said that as compared to the first time and the last time, "all those other times in between . . . blend together if it's something that happened **[**40]** pretty regularly or pretty commonly" and that little discrepancies would occur with each retelling while the major details of a recollection should stay consistent.

Torrance conducted Rita's forensic interview on March 14, 2016, and Amy's **[*198]** forensic interview on February 13, 2017, and said that she had no concerns that either complainant had been coached. On cross-examination, she acknowledged that if Kim had taken advantage of the counseling available at Alliance for Children in the year or so between Rita's and Amy's interviews, she would have been educated on some of the dynamics of grooming, which could have made it more difficult for Torrance to recognize potential signs of coaching. Kim denied having received any training on how to recognize the signs of sexual abuse until after Rita's and Amy's outcries, even though one of her jobs was working in a day care.

At trial, Amy testified about having performed oral sex on ***Hallman***. Yet, Amy acknowledged that during her sexual assault exam she had denied having performed oral sex on ***Hallman***. Amy also acknowledged that she did not mention some of the other incidents, including the "butt plug" game, in her forensic interview.

Fort Worth Police **[**41]** Officer G. Garcia testified that he responded to a domestic disturbance around 3 p.m. on August 9, 2014, the day before the August 10 incident. The suspect that day was Kim, and the complainant was ***Hallman***. Officer Garcia said that Kim did not mention any concerns to him regarding sexual abuse of anyone. He did not see any injuries, and no arrests were made.

Yolanda Sifuentes, who worked for the Tarrant County College South Campus as coordinator of special projects in the Family Empowerment Center, testified that she met with ***Hallman*** on March 8, 2016, at 10:52 a.m., and that Amy was with him. ***Hallman*** told her that Kim had been diagnosed with bipolar disorder and was abusive to Amy and that he had removed Amy from the situation, resulting in both of them being homeless. Sifuentes, who had been trained to look for signs of abuse, did not notice any injuries to Amy or any red flags during her conversation with ***Hallman***.

The jury deliberated for around seven hours during the first day of deliberations and then for two hours the following day. It sent out thirteen notes during deliberations. Three requests were for timeline information, two were for office supplies, and some requested clarification **[**42]** on the law (which the trial

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problems, and thyroid problems.

[16] ***Hallman*** was reindicted with both Rita and Amy as complainants.

[17] Torrance explained that sensory details describe what a child could feel, hear, or see during an incident while peripheral details were those surrounding the incident—where it happened, what else happened that day, and where other people were when it occurred.

court declined to answer by referring the jurors to the charge) or for portions of the record to which they were not entitled (the transcript of the prosecutor's closing argument). But the jury also asked for portions of Kim's testimony regarding where she slept at night and portions of Amy's testimony about when she was alone with ***Hallman*** while Rita was at band practice. The jury ultimately acquitted ***Hallman*** of the continuous-sexual-abuse count involving both Rita and Amy but found him guilty of the six remaining counts involving Amy.

E. Application

The State failed to comply with the Michael Morton Act's disclosure requirements until the second day of the punishment phase of ***Hallman***'s trial, and ***Hallman***'s conviction was entirely dependent on the jury's credibility determinations because there was no physical evidence to support the State's allegations. The jury acquitted ***Hallman*** of the most serious count—continuous sexual abuse of children under the age of 14—which was the only count involving both Amy and Rita.

Although the August 10 domestic violence incident was extraneous to the charged offenses, Kim said that she had mentioned the possibility of the **[**43]** sexual abuse of Amy by ***Hallman*** to the responding officers that day, but nothing in her **[*199]** written statement, which was not disclosed during guilt-innocence, indicated that she had actually done so. This gave Kim's written statement significant impeachment value when the responding officer testified that he had no recollection outside of his report. *See* *Hampton, 86 S.W.3d at 613* (requiring reviewing court to explain why a particular *Brady* item is especially material in light of the entire body of evidence).

Credibility was the key to this case, and by failing to disclose Kim's written statement to the police—which, contrary to Kim's testimony during trial, did not mention her suspicions that ***Hallman*** had been sexually abusing anyone—before or during the guilt-innocence phase of trial, the State deprived ***Hallman*** of the opportunity to fully develop his defensive theory that Kim, Amy, and Rita were lying.[18] This undisclosed evidence presented a reasonable probability that a total or substantial discount of Kim's testimony might have produced a different result during the guilt-innocence phase of trial.[19] When weighed and considered against other inconsistencies in Kim's, Amy's, and Rita's testimonies and the lack of any **[**44]** physical evidence that ***Hallman*** had sexually abused Amy and Rita, we conclude that this evidence would have been sufficient to undermine confidence in the jury's verdict.[20] *See* *Wearry, 136 S. Ct. at 1006*. Accordingly, we hold that the State violated *Article 39.14*'s requirements when it failed to disclose Kim's written statement[21] before the punishment phase of trial under the pre-Michael Morton Act definition of materiality.

In summary, no one disputes that the State failed to disclose Kim's statement before the second day of the trial's punishment phase (*Brady* prong 1), and as set out above, it was favorable to ***Hallman*** for its impeachment value (*Brady* prong 2), and it was material because of the reasonable probability that it might have tipped the balance and resulted in an acquittal of the remaining six counts involving Amy (*Brady* prong 3). *See* *Pena, 353*

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[18] The jury apparently determined that Rita was not credible because it did not find ***Hallman*** guilty of the only count involving her.

[19] Neither *Watkins* nor *Branum* involved a battle of the sort that routinely occurs in a sex-related case: the "he-said, she-said" confrontation that requires impeachment evidence to facilitate the jury's determination of the witnesses' credibility. There was no question in *Branum* that the defendant was driving when she crashed into the deceased's vehicle and killed him, and in *Watkins*, the defendant had notice under *Article 37.07* and pleaded true to the offenses listed in the indictment's enhancement paragraphs. In contrast to the undisclosed witness in *Young*, Kim was one of the State's principal witnesses in the sexual abuse case against ***Hallman***.

[20] The State argues that ***Hallman*** was able to impeach Kim's testimony through Detective Robles's testimony and the offense report, but Detective Robles testified that he had no independent recollection outside of the offense report, and Kim's handwritten statement directly contradicting her testimony at trial regarding whether she mentioned potential sexual abuse of Amy by ***Hallman***—the central issue at trial—would have provided the jury with stronger evidence of her credibility or lack thereof.

[21] The State's failure to timely disclose ***Hallman***'s written statement, on the other hand, was harmless because ***Hallman*** made that statement. *See* *Havard v. State, 800 S.W.2d 195, 204 (Tex. Crim. App. 1989)* ("[A]ppellant knew of both the existence and the content of his statement, as a matter of simple logic, because he was there when it was made."). And based on our resolution here, we need not reach whether the undisclosed family violence packet would also have made a difference. *See* ***Tex. R. App. P. 47.1***.

S.W.3d at 809. Under the circumstances presented here, we hold that the trial court abused its discretion by denying ***Hallman***'s motion **[*200]** for mistrial. Thus, we sustain ***Hallman***'s sole point.

IV. Conclusion

Having sustained ***Hallman***'s sole point, we reverse the trial court's judgment and remand this case for a new trial.

/s/ Bonnie Sudderth

Bonnie Sudderth

Chief Justice **[**45]**

Publish

Tex. R. App. P. 47.2(b)

Delivered: May 7, 2020

End of Document

EXHIBIT B
Disclosed Report

REDACTIONS MADE TO PROTECT ALL IDENTIFYING INFORMATION

FORT WORTH POLICE DEPARTMENT

14-76143 Supplement No ORIG

350 W. BELKNAP STREET

Fort Worth, Texas 76102

Fax 817-392-4201

817-392-4200

Reported Date 08/10/2014

Nature of Call ASLTCHILD

Member#/Dept ID# ROBLES,C

Administrative Information

Agency	Report No	Supplement No	Reported Date	Reported Time
FORT WORTH POLICE DEPARTMENT	14-76143	ORIG	08/10/2014	10:09

CAD Call No	Status	Nature of Call
140612356	Report taken	Injury to Child/Endangering/Abandoning

Location	City	ZIP Code	PRA
5417 BANDY AVE	Fort Worth	76134	F010

Division	Zone	From Date	From Time	Member#/Dept ID#
S	S04	08/10/2014	10:09	3766/ROBLES,C

Assignment	Entered by	Assignment
South Division Team 1 1st Shift	3766	South Division Team 1 1st Shift

RMS Transfer	Prop Trans Stat	Property?	Approving Officer	Approval Date
Successful	Successful	None	406132	08/11/2014

Approval Time 14:11:52

# Offenses	Offense	Description	Complaint Type	AC	Use
1	PC 22.04(A)(3)	Injury to a Child/El		C	N

Bias	Loc	#Pr	MOE	Act	Weapon/Force	IBRS	No	Cargo?
88	20			N	40	13B	1	

Link	Involvement	Invl No	Name	Race	Sex	DOB
ARR	ARR	1	HALLMAN,ROBERT FIZTGERALD	B	M	05/26/1967

# Offenses	Offense	Description	Complaint Type	AC	Use
2	PC 22.01(A)(1)	Assault with Bodily		C	N

Bias	Loc	#Pr	MOE	Act	Weapon/Force	IBRS	No	Cargo?
88	20			N	40	13B	2	

Link	Involvement	Invl No	Name	Race	Sex	DOB
ARR	ARR	1	HALLMAN,ROBERT FIZTGERALD	B	M	05/26/1967

Person Summary

Invl	Invl No	Type	Name	MNI	Race	Sex	DOB
ARR	1	I	HALLMAN,ROBERT FIZTGERALD	126881	B	M	05/26/1967
VIC	1	I	[redacted]	802052	[redacted]		
VIC	2	I	[redacted]	2386590	[redacted]		
WIT	1	I	[redacted]	2386586	[redacted]		
WIT	2	I	[redacted]	2386588	[redacted]		
WIT	3	I	[redacted]	2386587	[redacted]		

Summary Narrative

On Sunday 08/10/14, I, Officers were dispatched to a Domestic Disturbance to the residence of 5417 Bandy Ave at about 1012 hours.

ARR was transported to Jail.
A report was completed.

STATE'S EXHIBIT 36 1548964R

FORT WORTH POLICE DEPARTMENT

Arrestee 1: HALLMAN,ROBERT FIZTGERALD

Involvement	Invl No	Type	Name	MNI
Arrestee	1	Individual	HALLMAN,ROBERT FIZTGERALD	126881

Race	Sex	DOB	Age	Ethnicity
Black/African American	Male	05/26/1967	47	Non-Hispanic or Non-Latino

Height	Weight	Hair Color	Eye Color	Weapon Type	Res Status	OFN_INVL	Vic/Ofnd Age
5'10"	240#	Black	Brown	Hands,fists,feet	Resident	1	47

PRN: 3773912

Type	Address	City	State
Home	5417 BANDY AVE	Fort Worth	Texas

ZIP Code	Date
76134	08/10/2014

Phone Type	Phone No	Date
Cell	(817)862-9539	08/10/2014

Alias Name	Race	Sex	DOB
HALLMAN,ROBERT FIZTGERALD	Black/African American	Male	05/26/1967

Involvement	Arrest Type	Arrest Date	Arrest Time	Booking No	Book Date
Arrested	On-view arrest (NIBRS)	08/10/2014	10:30:00	14-22342	08/10/2014

Book Time	Status	Arrest Location	City
11:12:00	Booked	5417 BANDY AVE	Fort Worth

PRA	Armed	Multi-arrests	Zone
F010	Unarmed	Not a multiple arrest	S04

Charge	Level	Charge Literal
LOCAL	MC	Local Class C Warran
PC 22.01(A)(1)FV	MA	Aslt Causes B/I Fami
PC 22.04(F)A	FS	Inj Child/Eld/Disab

Victim 1: [redacted]

Involvement	Invl No	Type	Name	MNI
Victim	1	Individual	[redacted]	802052

Race	Sex	DOB	Age	Ethnicity
Black/African American	Female	[redacted]	41	Non-Hispanic or Non-Latino

Juvenile?	Height	Weight	Hair Color	Eye Color	Means of Attack	Extent of Injury	Dom Violence
No	5'03"	117#	Brown	Brown	Hands, fists and feet	Complaint of pain	Yes

Res Status	Vic/Ofnd Age	PRN
Resident	41	3773913

Type	Address	PRA	Zone
Home	[redacted]	F010	S04

Map Coordinates	City	State	ZIP Code	Date
[redacted]				08/10/2014

Type	ID No	OLS
Drivers License	[redacted]	Texas

Type	ID No
Social Security Number	[redacted]

Phone Type	Phone No	Date	Phone Type	Phone No
Business	[redacted]	08/10/2014	Home	[redacted]

Date: 08/10/2014

IBRS Info

Victim Invl No	Offense Codes	Injury
1	13B	None

Rel	Involvement	Invl No	Name	Race	Sex	DOB
SE	ARR	1	HALLMAN,ROBERT FIZTGERALD	B	M	05/26/1967

Victim 2: [redacted]

Involvement	Invl No	Type	Name	MNI
Victim	2	Individual	[redacted]	2386590

Race	Sex	DOB	Age	Ethnicity	Juvenile?
Black/African American	Male	[redacted]		Non-Hispanic or Non-Latino	Yes

Means of Attack	Extent of Injury	Dom Violence	Res Status	Vic/Ofnd Age	PRN
Hands, fists and feet	Complaint of pain	Yes	Non-Resident	8	3773914

FORT WORTH POLICE DEPARTMENT

Type	Address	PRA	Zone
Home	[redacted]	F010	S04

Map Coordinates	City	State	ZIP Code	Date
[redacted]				08/10/2014

IBRS Info

Victim Invl No	Offense Codes	Injury
2	13B	None

Rel	Involvement	Invl No	Name	Race	Sex	DOB
CH	ARR	1	HALLMAN,ROBERT FIZTGERALD	B	M	05/26/1967

Witness 1: [redacted]

Involvement	Invl No	Type	Name	MNI
Witness	1	Individual	[redacted]	2386586

Race	Sex	DOB	Age	Ethnicity
Black/African American	[redacted]		15	Non-Hispanic or Non-Latino

Juvenile?	Res Status	PRN
Yes	Resident	3773915

Type	Address	PRA	Zone
Home	[redacted]	F010	S04

Map Coordinates	City	State	ZIP Code	Date
[redacted]				08/10/2014

Witness 2: [redacted]

Involvement	Invl No	Type	Name	MNI
Witness	2	Individual	[redacted]	2386588

Race	Sex	DOB	Age	Ethnicity
Black/African American	Female	[redacted]	6	Non-Hispanic or Non-Latino

Juvenile?	Res Status	PRN
Yes	Resident	3773916

Type	Address	PRA	Zone
Home	[redacted]	F010	S04

Map Coordinates	City	State	ZIP Code	Date
[redacted]				08/10/2014

Witness 3: [redacted]

Involvement	Invl No	Type	Name	MNI
Witness	3	Individual	[redacted]	2386587

Race	Sex	DOB	Age	Ethnicity
Black/African American	Female	[redacted]	6	Non-Hispanic or Non-Latino

Juvenile?	Res Status	PRN
Yes	Resident	3773917

Type	Address	PRA	Zone
Home	[redacted]	F010	S04

Map Coordinates	City	State	ZIP Code	Date
[redacted]				08/10/2014

Modus Operandi

Physical Evidence	Weapon Used	Premise Type
Photos	Hands, fists, and feet	Residential-house

Victim's Race	Victim's Sex	Victim's Age
Black/African American	Female/Male	Juvenile/Adult

Victim's Action
At home

Suspect Action
Agitated/angry towards others/Struck victim/Suspects actions described in narrative

Crime Code(s)
Assault

Narrative

On Sunday 08/10/14, I, Officer C Robles #3766 working S119, was dispatched to a Domestic Disturbance to the residence of [redacted] at about 1012 hours.

The call details stated: "CP'S PARENTS BF GRN DRESS & BM BLK SHIRT GRY PANTS ARE PHYSICALLY FIGHTING IN THE STREET...NO WPNS SEEN....CP CALLING BACK AGAIN .. WONT ANSWER QUESTIONS -- RAMBLING ON --- CP SAYS DAD HIT HER IN THE FACE / MOM JUST GOT ON PHONE SAID HE HIT HER AND HIT THE 8 YO SON IN THE FACE".

Upon arrival of the scene at 1017 hours, I observed ARR (Hallman,Robert F. b/m 05/26/1967) wearing a blk shirt

FORT WORTH POLICE DEPARTMENT

Narrative

and gray pants waving me down in my marked patrol car.

Robert F. stated he was going next door to his neighbors residence 5421 Bandy Ave, to call his sister to come and pick him up. Robert stated his 14 year old daughter, WIT-1 [redacted] wanted to leave with him and started to follow him. VIC-1 [redacted] followed them both outside. Robert F. stated that [redacted] grabbed onto him and tried to get his cellphone out of his pocket. [redacted] then grabbed onto [redacted] and told her she wasn't going anywhere and to go inside of the house. [redacted] told Robert F. that she couldn't breath and Robert F. grabbed onto [redacted] trying to pull her away from [redacted] Robert F. stated that he never hit [redacted] or anyone else during the process.

Officer Oakley working S116, spoke with [redacted] stated that [redacted] tried to leave with Robert F. to a residence where narcotics are being used. [redacted] told [redacted] that she couldn't go and grabbed her by the arm to take her back home. Robert F. punched [redacted] right arm (causing her to feel pain) then twisted her arm behind her back (causing her to feel pain) [redacted] was able to use her left arm, and hit Robert F. in the head with the house phone. VIC-2 [redacted] observed what was going on, ran up and bit Robert F. on his back. Robert F. then punched [redacted] in his face and his stomach causing him to hurt. [redacted] was asked what happended. [redacted] stated he saw Robert F hurting [redacted] so he ran up and bit him. Robert F. then hit [redacted] in the face and stomach, causing him to hurt.

Officer Oakley spoke to the resident at 5421 Bandy, who did not want to give their information but advised what they had observed. Robert F and [redacted] were arguing in the street, as they always do. Robert F hit [redacted] on her arm, then twisted her arm behind her back. [redacted], ran and did something to Robert F's back. Robert F threw his arm back, and it was unclear if there was any contact made to [redacted] or not.

WIT-3 [redacted] stated the same as [redacted] [redacted] stated the same as her father. When asked further details of the incident, [redacted] got upset and went inside of the residence.

When Robert F was given his chance to write his statement, he advised that [redacted] bite him, but he did not hit [redacted] unless it was by accident.
Robert F was placed under arrest for Assault BI-Family Member and Injury to Child-Reckless BI. Robert was transported to 350 W Belknap,City of Fort Worth Jail without incident.
Photos were uploaded onto the family violence server. The Family Violence Packet was completed as well as an EPO, and turned in at the jail.

NO CSSU
Sgt Klein

14-76143 Supplement No 0001

FORT WORTH POLICE DEPARTMENT

350 W. BELKNAP STREET

Fort Worth, Texas 76102

Nature of Call

Reported Date
08/11/2014

Fax 817-392-4201

817-392-4200

Member#/Dept ID#
DORSEY,S

Administrative Information

Agency	Report No	Supplement No	Reported Date	Reported Time
FORT WORTH POLICE DEPARTMENT	14-76143	0001	08/11/2014	01:36

Member#/Dept ID#	Assignment	Entered by	Assignment	RMS Transfer
071501/DORSEY,S	PIC	071501	PIC	Successful

Prop Trans Stat	Property?	Approving Officer	Approval Date	Approval Time
Successful	None	071501	08/11/2014	01:36:22

Narrative

EPO entered into system on 081114 at 0136 by L584.

FORT WORTH POLICE DEPARTMENT

14-76143
DRAFT

Supplement No
0002

Reported Date
08/12/2014

350 W. BELKNAP STREET

Fort Worth, Texas 76102
Nature of Call

Fax 817-392-4201

817-392-4200

Member#/Dept ID#
PEREZ,R

Administrative Information

Agency	Report No	Supplement No	Reported Date	Reported Time
FORT WORTH POLICE DEPARTMENT	14-76143	0002	08/12/2014	15:20

Member#/Dept ID#	Assignment	Entered by
3635/PEREZ,R	Family Violence	3635

Assignment	Approving Officer	Approval Date	Approval Time
Family Violence			

Narrative

Detective: R. E. Perez 3635
Unit: SVS-Domestic Violence

On 08/12/2014 I, Detective Perez 3635 was assigned this report and reviewed the details of the report, photographs, and family violence packet to include written statement. I accessed Tarrant County Record and located the ARR under CID #0223112. I gathered this case file and submitted case to the TCDA Office for review on the charge. I recommend this case be closed by arrest.

Supervisor - Sgt W. Walls #3074

EXHIBIT C
Non-disclosed Evidence

REDACTIONS MADE TO PROTECT ALL IDENTIFYING INFORMATION

DEFENDANT'S EXHIBIT 28 1548964R

STATE OF TEXAS
COUNTY OF TARRANT

AFFIDAVIT

Before me the undesigned authority on this day personally appeared **ROBLES,C - 3766**, a peace officer for the STATE of TEXAS, who after being duly sworn upon oath deposes and says that he has good reason to believe that **HALLMAN,ROBERT FIZTGERALD** did commit the offense of **Aslt Causes B/I Family Member 13990031** (Penal Code # **PC 22.01(A)(1)FV**) against the laws of the State of Texas on 8 / 10 / 14. Said reason and belief is based on the following facts and circumstances and is sworn to under oath before undersigned authority.

This offense happened in FORT WORTH, TARRANT County, Texas. On Sunday 08/10/14, I, Officer C Robles #3766 working S119, was dispatched to a Domestic Disturbance to the residence of [redacted] Ave at about 1012 hours. The call details stated: "CP'S PARENTS BF GRN DRESS & BM BLK SHIRT GRY PANTS ARE PHYSICALLY FIGHTING IN THE STREET...NO WPNS SEEN....CP CALLING BACK AGAIN .. WONT ANSWER QUESTIONS -- RAMBLING ON --- CP SAYS DAD HIT HER IN THE FACE / MOM JUST GOT ON PHONE SAID HE HIT HER AND HIT THE 8 YO SON IN THE FACE". Upon arrival of the scene at 1017 hours, I observed ARR (Hallman,Robert F. b/m 05/26/1967) wearing a blk shirt and gray pants waving me down in my marked patrol car. Robert F. stated he was going next door to his neighbors residence [redacted] Ave, to call his sister to come and pick him up. Robert stated his 14 year old daughter, WIT-1 ([redacted]) wanted to leave with him and started to follow him. VIC-1 [redacted] Robert's wife of 14 years) followed them both outside. Robert F. stated that [redacted] grabbed onto him and tried to get his cellphone out of his pocket. [redacted] then grabbed onto [redacted] and told her she wasn't going anywhere and to go inside of the house. [redacted] told Robert F. that she couldn't breath and Robert F. grabbed onto [redacted] trying to pull her away from [redacted] Robert F. stated that he never hit [redacted] or anyone else during the process. Officer Oakley working S116, spoke with [redacted] stated that [redacted] ied to leave with Robert F. to a residence where narcotics are being used. [redacted] told [redacted] that she couldn't go and grabbed her by the arm to take her back home. Robert F. punched [redacted] right arm (causing her to feel pain) then twisted her arm behind her back (causing her to feel pain). [redacted] was able to use her left arm, and hit Robert F. in the head with the house phone. VIC-2 ([redacted]) observed what was going on, ran up and bit Robert F. on his back. Robert F. then punched Robert III in his face and his stomach causing him to hurt. [redacted] was asked what happended. [redacted] stated he saw Robert F hurting [redacted] so he ran up and bit him. Robert F. then hit [redacted] in the face and stomach, causing him to hurt. Officer Oakley spoke to the resident at [redacted], who did not want to give their information but advised what they had observed. Robert F and [redacted] were arguing in the street, as they always do. Robert F hit [redacted] on her arm, then twisted her arm behind her back. [redacted] ran and did something to Robert F's back. Robert F threw his arm back, and it was unclear if there was any contact made to [redacted] or not. When Robert F was given his chance to write his statement, he advised that [redacted] did bite him, but he did not hit [redacted], unless it was by accident. Robert F was placed under arrest for Assault BI-Family Member and Injury to Child-Reckless BI. Robert was transported to 350 W Belknap,City of Fort Worth Jail without incident.

Witness my signature this 10th day of August, 2014.

C. Robles #3766

Affiant

Subscribed and Sworn before me this the 10 day of Aug, 2014.

SGT Armendariz 3069

Notary Public/~~Magistrate~~
(Cross out inapplicable authority)

PEACE OFFICER in DISCHARGE of OFFICIAL DUTIES

Report No.: 14-76143

THE STATE OF TEXAS
COUNTY OF TARRANT

I Robert Hallman, prior to making any statement, having been duly warned by C. Robles #3766, the person to whom this statement is made; understand that (1) I have the right to remain silent and not make any statement at all, and that any statement that I make may be used against me at my trial; (2) Any statement I make may be used as evidence against me in court; (3) I have the right to have a lawyer present to advise me prior to and during any questioning; (4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; and (5) I have the right to terminate the interview at any time. Having been informed of these, my rights, and understanding same, I hereby freely, intelligently, voluntarily, and knowingly waive these rights and not desiring a lawyer, voluntarily choose to make the following statement:

Prior to having my oldest daughter call the police I made every effort to get away from my wife by going next door to my neibors house to wait on my sister to pick me and my middle daughter up [redacted] my wife followed us next door and begin to grab on me and then grab on my daughter [redacted] and she started having an asthma attack saying she couldn't breathe I begin to pull my wife to free my daughter so she could breathe In the process my son bit me in the back, he's eight No big deal but I did Not strike my son because of all the wrestleing he got bumped but not struck by me intentionally to harm him

Date: 8/10/14 Time: 1134 Print Name (AP): Robert Hallman

Officer C. Robles #3766 Signature (AP) Robert Hallman

Report No.: 14-76143

Victim/Witness Voluntary Statement

My name is [redacted] and live at [redacted] in Tarrant County Texas 76134. I am 41 years of age. My Social Security Number is [redacted]. My date of birth is [redacted]. My telephone number at home is [redacted]. My telephone number at work is [redacted]. My cell phone number is [redacted].

(Name, Last, First Middle Initial) (House Number Street City) (County) (Zip Code)

I have 12 years of formal education and do read, write, and understand the English or Spanish language.
(Circle One)

I am giving this statement to Oakley #3175; of the (name of your Police Department.....) of my
(Officer taking statement)

own free will, for whatever purposes it may serve. I am not under arrest, nor am I being forced in any manner to make these statements.

They are and will be the same statements I would make during the presentation of this case in a court of law.

This morning my daughter was trying to leave with her dad to go with Kim to his sister house to smoke marijuana openly I refused to let he go in that enviroment with him. Her father told her to run away. I went after her to the neighbors house. and asked her to come back home and I took her by her arm at the wrist and tried to pull her back and thats when Mr. Hallman hit me in my right arm and twisted my arms behind my back and when my son seen him hit me hit tried to protect me, and hit him and in return Mr. Hallman hit him in the face and stomache.

[redacted]
Name

Oakley #3175
Witness

[redacted]
Place

8-10-14 1050
Date and Time

14-76143

FAMILY VIOLENCE PACKET INSTRUCTIONS

The purpose of the Family Violence Packet is to assist in the investigation and eventual prosecution of family violence assaults. Tarrant County District Attorney and Fort Worth PD have "No Drop" policies. Family Violence cases are filed whenever appropriate and whenever possible, regardless of the victim's cooperation. Victims do not determine whether charges are filed. It is not necessary to ask family violence victims whether they want to prosecute or press charges, in fact this question may confuse the victim. Ask victims if they are willing to cooperate with the officer's investigation, or consider the victim's cooperative behavior as an indication of willingness to cooperate.

When to use this packet: Use in all Family Violence Assault offenses. The three "Checklist" pages need to be completed on Class "C" Family Violence also.

Interviewing/ General Considerations:

- The officer should fill out the packet with the exception of the victim's statement and medical release. Do not hand the packet to the victim.
- Include a description of the crime scene in the narrative.
- If both parties have injuries, officers are to make every effort to determine primary aggressor. Dual arrests are appropriate only when officers are unable, after investigation, to determine primary aggressor.
- If the officer feels the situation is detrimental to the children in the home, the officer should make a report to CPS.

Photographs:

- Take photographs (or have Crime Scene take photographs) of any injuries whenever possible, regardless of the victim's wishes to cooperate with the investigation.
- Take photographs of the crime scene whenever possible including disabled telephones.

PACKET

Checklist	Officer is to check off all actions taken
Photographs Taken of	Officer indicates who/what was photographed
In Cases of Arrest	Officer checks off whether EPO was offered and victim's indication of whether the EPO was requested
Intimate Partner Violence Risk Assessment	Officer completes gray section only in cases of adult intimate partners or former partners. Ask the victim each question and indicate the number of boxes checked
Offense Location	Indicate where the offense took place, including date, time and who initiated the original 911 call if known.
Condition of Victim Upon Officer Arrival	Check all that apply
Victim Name/DOB	Collect contact information for the victim, including temporary address if the victim indicates she/he may stay somewhere other than their residence in the near future. **Obtain the name of a person who will always know where the victim can be reached.** Indicate whether the victim appears to have been using alcohol or drugs at the time of your contact.
Condition of Suspect Upon Officer Arrival	Check all that apply
Suspect Name/DOB	Collect information including contact information. If the suspect admits to being on community supervision (parole/probation) obtain the name and number of the supervising officer if possible. Indicate whether suspect has outstanding warrants. Indicate whether the suspect has a concealed handgun license if known. Indicate whether the suspect was present on scene, was arrested, and if so, on what initial charge.
Relationship of Victim/Suspect	Check the box that most closely applies. Do not presume common law marriage. (Common law marriage can only be determined by a judge- see TX Family Code 2.401)
Length of Relationship	Indicate the length of the relationship between the victim and suspect, and any prior incidents if known.
P.O.	Indicate whether the victim (or suspect) claims to have had a protective order, an Emergency Protective order issued by a magistrate, or other types of order.
Incident	Check all that apply
Weapons Used	Check all that apply, list 'other' type of weapon if other. Indicate whether weapon was seized.
Were Children Present/Were Witnesses Present	Indicate if children or other witnesses were present and whether they saw or heard the incident, and whether they were interviewed on scene.
Children and Witnesses Sections	Collect information on children or other witnesses including demeanor on scene and indicate the relationship to the victim and/or suspect. If more than three Children or Witnesses were interviewed, use additional sheets. Collect a contact phone number for any witnesses other than children. Indicate in comments section if children who were witnesses will be with other caretakers other than the victim.
Body Diagram	Indicate where injuries were located on the victim and on the suspect by marking the diagram. Circle above the diagram which gender diagram belongs to the Victim and which to the Suspect. If Victim and Suspect are the same gender, use additional sheets. Describe the injuries in your narrative and photograph if at all possible.
	Sign and Date J Bailey #3175 8-10-14
VICTIM/WITNESS VOLUNTARY STATEMENT / ARRESTED PERSON VOLUNTARY STATEMENT	Ask the victim to fill out the victim statement. If the victim is incapable of filling out the form, the officer may fill it out for the victim and note the reason in the narrative. If the victim refuses, write "Refused" and ask the victim to sign the refusal, include the form in the packet regardless. You may ask the suspect to fill out the Arrested Person Statement.
IMPORTANT INFORMATION FOR VICTIMS OF FAMILY VIOLENCE	This sheet is to be given to the victim. Reporting Officer will write the report number and officer ID # at the top.
AUTHORIZATION FOR RELEASE OF PATIENT INFORMATION	Have the victim fill out and sign this form if the victim indicates she/he will or may seek medical treatment for injuries
Arrested Person	Jail Lieutenant gets Family Violence Packet, EPO form, and Victim Notification form. Reviewed by Lt. Sgt. Arredondo 3069 Date: 8/10/14
Suspect Cases and Class "C"	Reviewed by Patrol supervisor: Date:
Suspect Packet and Class "C"	Deliver all material to "Family Violence Box" at assigned NPD.

Report No..: 14-76143 Agency: Fort Worth PD

Tarrant County Family Violence Packet:

Checklist:

All Family Violence/Dating Violence Offense Reports:

- [x] FV Victim Statement filled out and signed
- [ ] Victim Refused Statement, Officer Signed/Noted
- [x] Body Diagram completed
- [x] Medical Release form signed if applicable
- [x] Colored handouts from packet given to victim
- [x] Injuries noted in narrative
- [x] Victim Notification Page

Photographs Taken of:

- [x] Victim
- [ ] Arrested Person
- [ ] Children
- [ ] Crime Scene
- [ ] Weapon

In cases of Arrest:

- [x] **Emergency Protective Order** offered
- [x] Victim Requested EPO
- [ ] Victim Declined EPO
- [x] Victim Notification form turned in at Jail
- [ ] **This arrest involved serious bodily injury and/or use/display of a weapon. EPO Mandatory**
- [ ] Officer completed EPO application on Aggravated Arrests due to victim's refusal

Intimate Partner Violence Risk Assessment

(TO BE COMPLETED ON CASES OF PARTNER VIOLENCE ONLY)

Ask victim every question. Check if yes to any questions below, regarding this or past incidences

- [ ] Has the suspect ever been violent toward you in the past?
- [ ] Does the suspect have access to firearms/weapons?
- [ ] Has the suspect ever threatened to kill you?
- [ ] Has the suspect ever used weapons against you or threatened to
- [ ] Has the suspect ever threatened to kill anyone else or kill himself/herself?
- [ ] Has the suspect attempted suicide?
- [ ] Does the suspect have a history of mental illness or emotional problems?
- [ ] Have you ever been seriously injured by the suspect?
- [ ] Have things recently gotten worse (more frequent or more severe)?
- [ ] Does the suspect abuse alcohol or drugs? List
- [ ] Has the suspect ever been abusive when drinking or using drugs?
- [ ] Has the suspect ever been violent in front of others or in public?
- [ ] Has the suspect ever put hands or objects around your neck and squeeze/choked?
- [ ] Has the suspect ever been violent toward children?
- [ ] Are you currently pregnant?
- [ ] Does the suspect have few friends or seem emotionally dependent on you?
- [ ] Does the suspect seem unusually jealous/possessive or consider you his/her property?
- [ ] Has the suspect ever been violent when you left or talked about leaving him/her?
- [ ] Have you recently left the suspect?
- [ ] Has the suspect ever forced you to have sex against your will?
- [ ] Have police been called out regarding violence between you and this suspect?
- [ ] Has the suspect recently lost his/her job or had trouble keeping a job?
- [ ] Has the suspect ever been violent toward pets?

____ # of boxes checked

These Risk Factors have been associated with family violence that has escalated to homicide or serious bodily injury.

Offense Location: [redacted] **Time:** 10:09 A.M. **Date:** 8-10-14

911 call original caller was: ___Victim ___Hospital ___Neighbor ✓ Family Member ___Other (List) __________

Reporting Person Name/Phone: [redacted]

Victim

Condition of Victim Upon Officer Arrival

- [ ] Angry
- [ ] Apologetic
- [x] Crying
- [x] Fearful
- [ ] Agitated/Excited
- [ ] Calm
- [ ] Afraid
- [ ] Nervous
- [ ] Threatening
- [ ] Other (List) __________

- [x] Complain of Pain
- [ ] Bruise(s)
- [ ] Abrasion(s)
- [ ] Minor Cut(s)
- [ ] Bite Mark(s)
- [ ] Fracture(s)
- [ ] Gunshot(s)
- [ ] Deep Cut(s)
- [ ] Burn(s)
- [ ] Sexual Assault
- [ ] Offensive Contact
- [ ] Other (List) __________

Victim Name/DOB: [redacted] B/F [redacted]

Home #: [redacted] Work #: Cell #: [redacted]

Email Address:

Address: [redacted]

Temporary Address:

Contact Person Name/Phone:

Alcohol/Drug Use: __Yes ✓ No Type of Substance:

Report No..: 14-76143 — Agency: Fort Worth PD

Suspect

Condition of Suspect Upon Officer Arrival
- ☑ Angry
- ☐ Apologetic
- ☐ Crying
- ☐ Fearful
- ☐ Agitated/Excited
- ☐ Calm
- ☐ Afraid
- ☐ Nervous
- ☐ Threatening
- ☐ Other (List)

- ☐ Complain of Pain
- ☐ Bruise(s)
- ☐ Abrasion(s)
- ☐ Minor Cut(s)
- ☐ Bite Mark(s)
- ☐ Fracture(s)
- ☐ Gunshot(s)
- ☐ Deep Cut(s)
- ☐ Burn(s)
- ☐ Sexual Assault
- ☐ Offensive Contact
- ☐ Other (List)

Suspect Name/ DOB: Hallman, Robert F B/M 5-26-67

Contact Information: 5417 Bandy Fw TX 76134

On Probation/Parole?: __Yes ✓No County:

P.O. Name:

Does suspect have outstanding warrants? __ Yes __ No CHL? __ Yes __ No

Alcohol/Drug Use: ✓Yes __ No Type of Substance: Marij. / Beer

Suspect Present? ✓Yes __ No **Arrested ?:** ✓Yes __No

Charge: AB7-Fm + Injury To Child - Reckless RT

Relationship

Relationship of Victim/Suspect
- ☒ Spouse
- ☐ Former Spouse
- ☐ Cohabiting Partners
- ☐ Household Member
- ☐ Other (List)
- ☐ Siblings
- ☐ Other Relative
- ☐ Parents of Same Child
- ☐ Dating
- ☐ Former Dating
- ☐ Parent/Child

Length of Relationship: 14 yrs. ____ months

Relationship Ended?: __Yes __No Date Ended:

Prior Incidents/ previous call numbers/ dates/ jurisdictions etc. if known

P.O.

Protective Order ever issued? ☐ Current ☐ Expired ☐ Unknown ☐ Texas ☐ Other State

EPO ☐ Current ☐ Expired

Other Orders ☐ Ex Parte ☐ Restraining Order ☐ Criminal Trespass ☐ No Contact condition of bond ☐ Other (List) ____ ☐ None

Incident

Description of Incident- *Check All That Apply:*
- ☐ Destroying Property
- ☐ Throwing Objects
- ☐ Pushing/Shoving
- ☒ Hitting with Fist (closed)
- ☐ Slapping (open hand)
- ☐ Biting
- ☐ Kicking
- ☐ Choking/Strangulation
- ☐ Threat w/ Weapon
- ☐ Prevented from Leaving
- ☐ Threat of Retaliation
- ☐ Threat of Physical Violence
- ☐ Offensive contact
- ☐ Threat of Sexual Assault
- ☐ Sexual Assault
- ☒ Grabbing
- ☒ Restraining
- ☐ Burning
- ☐ Scratching
- ☐ Biting
- ☐ Cutting
- ☐ Stalking
- ☐ **Used Weapon**
- ☐ Homicide
- ☒ Other (List) Hands

Weapons Used
- Suspect: ☐ None ☐ Knife ☐ Blunt Object ☐ Firearm ☐ Vehicle ☒ Other (List) Hands
- Victim: ☐ None ☐ Knife ☐ Blunt Object ☐ Firearm ☐ Vehicle ☒ Other (List) phone

Weapon Seized? (Suspect) ☐ Yes ☐ No — Weapon Seized? (Victim) ☐ Yes ☐ No

Were Children Present ☒ Yes ☐ No
Did they: ☐ See the Incident ☐ Hear the Incident

Were Children Interviewed? ☒ Yes ☐ No
Interviewed By:

Other Witnesses Present During the Incident? ☒ Yes ☐ No
Did they: ☒ See the Incident ☐ Hear the Incident

Were Witnesses Interviewed? ☒ Yes ☐ No
Interviewed By: J Oakley 3178

Children*

Name of Child: DOB	Name of Child: DOB	Name of Child: DOB
[redacted]	[redacted]	[redacted]
Relationship to Victim: [redacted]	Relationship to Victim: [redacted]	Relationship to Victim: [redacted]
Relationship to Suspect: [redacted]	Relationship to Suspect: [redacted]	Relationship to Suspect: [redacted]
Demeanor on scene: ☐ Angry ☐ Apologetic ☐ Crying ☐ Fearful ☐ Agitated/Excited ☒ Calm ☐ Afraid ☐ Nervous ☐ Other (List)	Demeanor on scene: ☐ Angry ☐ Apologetic ☐ Crying ☐ Fearful ☐ Agitated/Excited ☒ Calm ☐ Afraid ☐ Nervous ☐ Other (List)	Demeanor on scene: ☐ Angry ☐ Apologetic ☐ Crying ☐ Fearful ☐ Agitated/Excited ☒ Calm ☐ Afraid ☐ Nervous ☐ Other (List)

[redacted] VICTIM 2 [redacted]

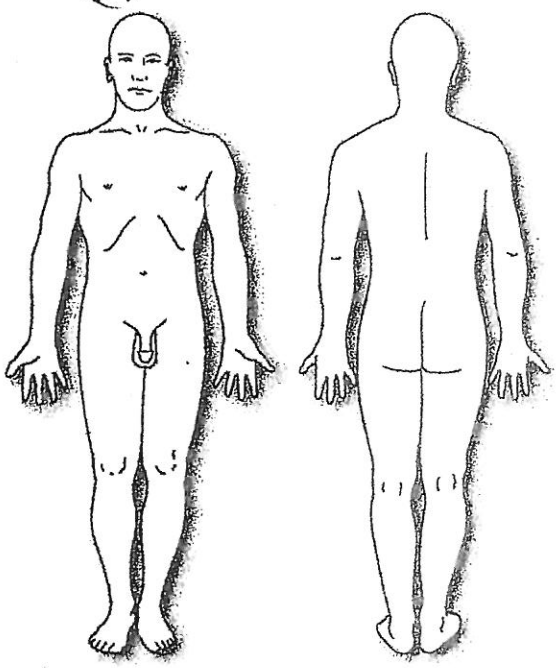
Report No.: 14-76143 Agency: Fort Worth PD

Witnesses*	Name and Phone number of Witness:	Name and Phone number of Witness:	Name and Phone number of Witness:
	Relationship to Victim:	Relationship to Victim:	Relationship to Victim:
	Relationship to Suspect:	Relationship to Suspect:	Relationship to Suspect:
	Demeanor on scene: ☐ Angry ☐ Apologetic ☐ Crying ☐ Fearful ☐ Agitated/Excited ☐ Calm ☐ Afraid ☐ Nervous ☐ Other (List) _____ _____	Demeanor on scene: ☐ Angry ☐ Apologetic ☐ Crying ☐ Fearful ☐ Agitated/Excited ☐ Calm ☐ Afraid ☐ Nervous ☐ Other (List) _____ _____	**Demeanor on scene:** ☐ Angry ☐ Apologetic ☐ Crying ☐ Fearful ☐ Agitated/Excited ☐ Calm ☐ Afraid ☐ Nervous ☐ Other (List) _____ _____

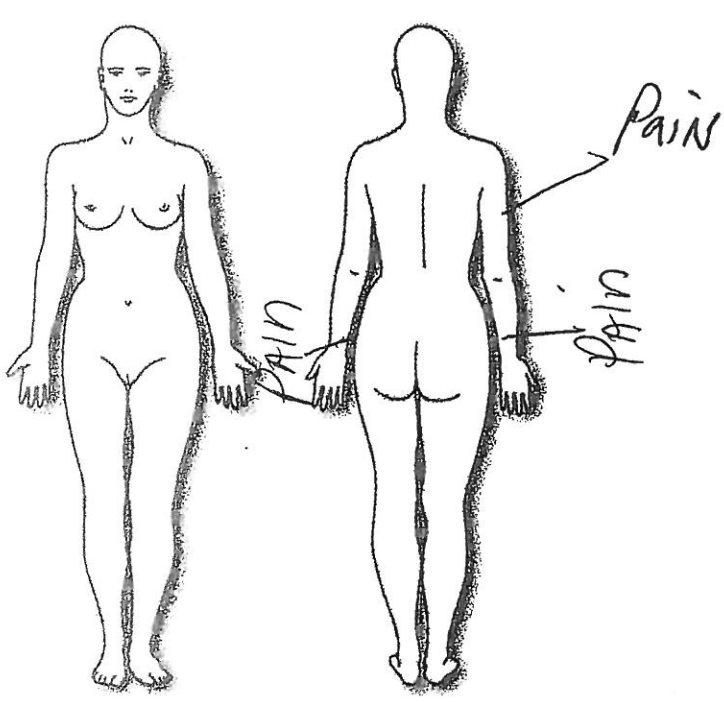
Attach additional forms/sheets if more than three witnesses or children

Officer Additional Comments or Victim or Suspect Spontaneous Statements:

Victim/Suspect



Victim/Suspect



Officer Name/ID#: J Oakley #3175 **Officer Signature:** J Oakley #3175 **Date:** 8-10-14

Report No.: 14-76143

AUTHORIZATION FOR RELEASE OF PATIENT INFORMATION

Name of Patient: [redacted] Date(s) of Service: _____

Date of Birth: [redacted] Social Security Number: _____

I, the undersigned, authorize _____ the release of or request access to the
Name of Hospital
information specified below from the medical record(s) of the above-named patient.

PATIENT INFORMATION IS NEEDED FOR:

- ☐ Continuing Medical Care
- ☐ Insurance
- ☒ Legal Purposes
- ☐ Military
- ☐ Personal Use
- ☐ School
- ☐ Social Security/Disability
- ☐ Other: _____

INFORMATION TO BE RELEASED OR ACCESSED:

- ☒ History & Physical
- ☒ Operative Reports
- ☒ Lab/Pathology Reports
- ☒ Consultation Report
- ☒ Discharge/Death Summary
- ☒ X-ray Reports/Images
- ☒ Emergency Room Record
- ☒ Face Sheet
- ☒ Other: Any other reports related to the dates of treatment

The above information may be released to (specify name or title of individual or the name of the organization to which records are to be released and the appropriate address):

_____
(Doctor, Hospital, Attorney, Insurance Company, Self, etc.) Phone Number

_____
Address (Street, City, State, Zip Code)

I understand that my records are confidential and cannot be disclosed without my written authorization, except when otherwise permitted by law. Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected. I understand that the specified information to be released may include, but is not limited to: history, diagnoses, and/or treatment of drug or alcohol abuse, mental illness, or communicable disease, including Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS).

I understand that treatment or payment cannot be conditioned on my signing this authorization, except in certain circumstances such as for participation in research programs, or authorization of the release of testing results for preemployment purposes. I understand that I may revoke this authorization in writing at any time except to the extent that action has been taken in reliance upon the authorization. I understand I may be charged a retrieval/processing fee and for copies of my medical records according to Texas Hospital Licensing law.

This authorization will expire One Hundred Eighty (180) days from the date of my signature unless I revoke the authorization prior to that time or unless otherwise specified by date, event, or condition as follows:

Date 8-10-14 Signature: [redacted]

Patient or Legally Authorized Representative

[redacted]

Printed Name of Patient or Legally Authorized Representative

For departmental use: MRN/Acct#

Relationship to Patient

Victim Notification

Service # 14-76143

Prisoner Name: Hallman, Robert

Prisoner DOB: 05-26-67

Fort Worth Prisoner ID # (PID#): _____ (If known)

Person to Contact: [redacted]

I do ~~not~~ wish to be notified.

Victim Signature [redacted] Date: _____

Main Phone #: [redacted] ***No Pagers***

Alternate Phone #: [redacted]

Comments: _____

Emergency Protective Order Requested:

Yes (If Yes, fill out Request for Magistrate's Emergency Protective Order)

~~No~~

Officer: S. Oakley 3175 **Date:** 8-10-14

Name ID#

Notification Attempts:

1st Attempt: _____ Contact No Contact _____

Date Time Officer Initials ID#

2nd Attempt: _____ Contact No Contact _____

Date Time Officer Initials ID#

3rd Attempt: _____ Contact No Contact _____

Date Time Officer Initials ID#

AGENCY (out of town only)

FW 021559

XEROX

MAGISTRATE WARNING

Booking No. 14-22342
Service No. 14-76143
Warrant No. _____

THE STATE OF TEXAS
COUNTY OF TARRANT

Before me, the undersigned magistrate of the State of Texas, on this day personally appeared the accused, **HALLMAN,ROBERT F**, Race B, Sex M, DOB 05/26/1967, and said person was given the following warning by me:

(1) You are charged with the offense of ASSAULT BI-FAMILY MEMBER. An affidavit charging you with this offense has / has not been filed in the court.
(2) You have the right to hire a lawyer and have him or her present prior to and during any interview and questioning by peace officers or attorneys representing the state.
(3) If you cannot afford a lawyer, you have the right to request the appointment of a lawyer to be presented prior to and during any such interview and questioning and you have the right to have a lawyer appointed to represent you if you cannot afford a lawyer. This means you may obtain your own lawyer or have a lawyer appointed for you by the court. You may have reasonable time and opportunity to consult your lawyer if you desire. In the event you want a lawyer appointed for you, you will be asked to complete a written form that contains questions about your financial resources. You will be provided with the forms needed to make a request for a lawyer. If you need help completing the forms, reasonable assistance will be provided to you.
(4) You have the right to remain silent. You do not have to speak to the police.
(5) You are not required to make a statement. Any statement you do make can and may be used against you in court.
(6) You have the right to stop any interview or questioning at any time.
(7) You have the right to an examining trial.
(8) If you are not a citizen of the United States, you have the right to contact your consulate. Depending on the nature of the charge, you could be deported or have your residency status revoked.

THE ACCUSED (DOES) DOES NOT WANT TO REQUEST A COURT APPOINTED LAWYER.

MAGISTRATE

PERSON WARNED

FW Jail

Your are remanded without bond._____

Your bond is set at $ 2500 W/EPO

WITNESS: AM

Place of warning: _____

Time: 7:15pm

Date: AUG 10 2014

MM

PROBABLE CAUSE DETERMINATION
AND COMMITMENT ORDER

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS
TO THE SHERIFF OF TARRANT COUNTY:

Sufficient facts have been presented to me under oath by affidavit, sworn testimony, or otherwise, to show that probable cause exists for the continued detention of the accused, HALLMAN, Robert F, as to the following charge: ASG BI FAM MEM. You are hereby ORDERED to take into custody and safely keep the accused in your jail and hold him/her in your jail to be held to answer to the assigned court of jurisdiction. INSTANTER: Municipal Court of _____, the Tarrant County Criminal Court or the Tarrant County District Court in the current term of said court.

Signed this 10 day of Aug, 2014.

2014 AUG 10 PM 5:09

Signature: _____

Print Name: Louis Garza

Magistrate for Tarrant County, Texas

ELECTION OF COUNSEL

Name: HALLMAN, Robert F **DOB:** 5/26/67

CID No: _____ **Age:** _____ **Race:** B **Sex:** M

ARE YOU ENTITLED TO COURT-APPOINTED LAWYER?? (Select and initial one)

_____ **NO, I AM NOT ENTITLED TO AN APPOINTED LAWYER.**
I have been warned by the Magistrate that I have the right to request a determination of indigency to decide whether I am entitled to the appointment of a lawyer and I understood the warnings given to me by the Magistrate. I will hire my own lawyer.

_____ **I DO NOT WANT TO MAKE A DECISION AT THIS TIME.**

RH **YES, I DO BELIEVE THAT I AM ENTITLED TO AN APPOINTED LAWYER.**
I have been advised by the Magistrate of my right to request a determination of indigency to Determine if I qualify for a court-appointed lawyer. I certify that I am without means to employ a lawyer of my own choosing and I now request the court to select and appoint a lawyer for me. I understand that I may be required to repay Tarrant County for a court-appointed lawyer at a later time, under such terms as a court may determine based on my future financial status.

RH **Yes, I received the Notice to Defendant Released Prior to Appointment of Lawyer.**

X _____ 08-10-2014

Arrested Person **Date**

ORDER SETTING CONDITIONS OF BOND

IT IS THE ORDER OF THE COURT that if you make bond and receive an appointed lawyer that you **MUST COMPLY** with the following additional terms and conditions of bond. Any violation of these conditions may result in your bond being held insufficient and you being placed back in jail.

1. You must bring to your Initial Appearance Setting copies of all of your financial Information, including: your last income tax return together with all W-2 form for that Year: your two most recent paychecks or pay stubs; your most recent Social Security or disability payment stubs; your most recent stock account statements; proof that you have been found to be indigent or eligible for benefits by a government agency; proof of your expenses such as rent or mortgage payments; utility bills; day cares costs; grocery costs; and if you own your own home, proof of its value, which can be found at: www.tad.org.
2. You must keep all appointments with your lawyer.
3. You must attend all court settings.
4. You must notify your lawyer's office and bondsman of any changes in your residence address, business address or telephone numbers within 24 hours of such change.

_____ 08-10-2014

Judge/Magistrate **Date**

FV / CAU

Fort Worth Police Department

Name (Last, First Middle)	Race	Sex	Date of Birth	Height	Weight	Eyes	Hair
HALLMAN,ROBERT FIZTGERALD	B	M	05/26/1967	5'10"	240#	BRO	BLK

State of Birth	Citizenship	Current Address	City	State	ZIP
TX	US	5417 BANDY AVE	FW	TX	76134

Alias Name	Alias DOB	MNI #
		126881

Social Security Number	Driver License Number	State	Identification Number
572-27-2951			

Emergency Name	Telephone #
HALLMAN,JACKQUELIN	(682)465-6251

Place of Arrest	Case Number	Contributor Ori.	Prosecutor Ori.
5417 BANDY AVE	14-0076143	TX2201200	TX220015A

Arrest Officer	I.D. No.	Date of Arrest	Time of Arrest
ROBLES,C	3766	08/10/2014	10:30

Transport Officer	I.D No.	Status	Booking #
ROBLES,C	3766	BOOKED	1422342

Fort Worth Charges Requiring a TRN		TRN 9133897956	
Statue Citation	Offense/Code	Date of Offense	Level/Degree
PC 22.01(A)(1)FV	Aslt Causes Bl Family Member 13990031	8/10/14	MA
PC 22.04(F)A	Inj Child/Eld/Disab Reckless Bl 13990044	8/10/14	FS

Fort Worth Non-Class C Warrants			
Statue Citation	Offense/Code	Level/Degree	Warrant #

Out of City Charges					
Charge	Warrant #	Agency	Level/Degree	Bond/Fine	TRN #

Fort Worth Class C Charges			
Offense	Warrant or General Complaint #	Bond/Fine	Count
Local Class C Warrants 00000000		0	3
		Total Count:	3

31

Check box if any items below apply:

- ☐ EPO attached
- ☒ AP was checked for warrants and all outstanding have been confirmed
- ☐ AP was at the hospital at the time paperwork was submitted to Jail Supervisor
- ☐ AP is not US citizen
- ☐ Use of Pepper Spray and/or Tazer was used on AP during arrest

CLERK

2014 AUG 10 P 1:33

FT WORTH, TARRANT CO, TX
MUNICIPAL COURT
FILED

Fort Worth Police Department

Filling Agency Name: FORT WORTH POLICE DEPT.		Filling Agency Code: **TX2201200**	
Defendant: HALLMAN,ROBERT FIZTGERALD		Report #: **14-0076143**	
Sex: M	Race: B	SS #: 572-27-2951	DOB: **05/26/1967**
Home Address: 5417 BANDY AVE		Phone:	

Charged Offense	Level of Offense	Date of Offense	Case #
Aslt Causes B/I Family Member 13990031	MA	8/30/14	14-76143
Inj Child/Eld/Disab Reckless BI 13990044	FS	8/30/14	14-76143

Defendant's primary language, if other than English:	
Defendant's special circumstances:	
Bondsman:	Phone:

Co-defendant:		CID #:	
Sex:	Race:	SS #:	DOB:
Co-defendant:		CID #:	
Sex:	Race:	SS #:	DOB:

Exhibit D
39.14 Hearing

REDACTIONS MADE TO PROTECT ALL IDENTIFYING INFORMATION

reports. And from my experience in the D.A.'s office, we were able to obtain offense reports from 20 years back or further. So it doesn't make sense that they absolutely cannot find them.

In addition to that, they are going into this incident with Bobby. That was in an August the 10th, 2014 report that is incomplete, and we did not receive a family violence packet. And from what I understand, my client gave a statement at that time and we have yet to receive those documents even though we've made these requests. And I don't know how else to do it, Judge. I just don't.

THE COURT: And the Court orders the State under 39.14 to disclose to the Defense any offense reports that are in the possession of the State, but the State has just put on the record that they have made efforts to procure those reports and that the reports don't exist.

So if there are further measures that you're able to take to procure those reports, the Court is ordering you to do that and to disclose them to the Defense under 39.14 as expeditiously as possible at this point. But we're not going to postpone the trial because of that.

And that concludes this portion of the hearing. We're off the record.

(Court in recess at 8:35 a.m. to 8:41 a.m.)

THE COURT: We're back on the record.

what the offense report shows as to whether or not we have any redirect, Judge.

THE COURT: Okay. Ladies and gentlemen, we'll take a ten-minute recess.

(Jury out at 9:06 a.m.)

THE COURT: The court is in recess for ten minutes. We're off the record.

(Court in recess at 9:07 a.m. to 9:23 a.m.)

HEARING OUTSIDE THE PRESENCE OF THE JURY

THE COURT: We're back on the record outside the presence the jury.

And, State, have you had an opportunity to make some further inquiries about whether the requested reports and documents are available?

MS. DEENER: We have. And it's as I stated before when we were off the record, I had mentioned the fact that back a month or so ago, this was discussed. Actually I think it was more than a month ago now, that Defense counsel had asked me for the related offense reports for the defendant's criminal history. I had indicated to her that I thought everything that -- that we had had been open to them, and they had it, but I would double-check.

There was, I think, a report or two that we didn't have uploaded for maybe Amanda Cook, but we did have the related reports of 2014, were already uploaded and open to

them on TSP. That's what they had asked us for.

Now, as to the underlying offense reports for the habitual count, I believe that she also asked me about those back then, and I had asked our secretary about that. She indicated that they do have -- I don't know what they call it, but they basically have a policy that after a certain amount of time, they destroy these. That's done by the warehouse. And so that has already been done with the -- with the prior burglary of a building in 1990.

I think in -- now, I don't know if the other one exists. We may or may not have it. We actually have inquired into Fort Worth records. I think they have a 20-year policy, Your Honor, that after 20 years they destroy it. So they have told us that the burglary of a building does not exist. The burglary of a habitation, we have Fort Worth PD looking for those right now.

And I -- I don't intend to get into the underlying facts of that. I didn't get into the underlying facts of it on cross-examination. I asked him, is a habitation -- that's a house. So we have burglary of a habitation. I did not ask him dates and what happened in the specific instances inside of that prior. I do not have that offense report right now, but we are trying to -- to locate anything.

MS. MARTINEZ: And I believe her question was,

so you broke into a house. That's what the definition of burglary of a habitation is. The question was along those lines. So she specifically said, so that means you broke into a house. And until we know exactly what the facts of the -- of the offense were, we -- we need an opportunity to refute that, because it is much more aggravating for a jury to believe that he broke into someone's home as opposed to pawning a TV and then pleading guilty to burglary of a habitation.

And so she's left that impression with the jury that he broke into a house, and so we would be entitled to go into that.

THE COURT: So, State, of whom are you inquiring as to whether there is an offense report from the 1999 burglary of a habitation.

MS. DEENER: Fort Worth Police Department.

THE COURT: And so what will it require for them to give you an answer?

THE INVESTIGATOR: Typically, it'll take a couple of days for a response.

MS. DEENER: Our investigator who you just heard is Mike McGuire. He's inquired from Fort Worth PD to see if they exist. And typically, it takes them a few days. Now, I don't know about a few days to see if it actually exists.

Is it something that we can verify if it exists or does not exist today?

THE INVESTIGATOR: I'm not sure about that.

MS. DEENER: Okay.

MS. MARTINEZ: And, Your Honor, I also want to state on the record that we did issue subpoenas for incident reports, and we've also subpoenaed other things from the Fort Worth Police Department, such as as it related to this particular offense for which he's charged, records of his vehicle that we believe to be impounded. The records we received from Fort Worth PD were completely wrong.

And so when the detective testified and we were trying to get to the bottom of this truck, it took the detective over the break a quick phone call to get the correct records. So we are certainly at a disadvantage. It's -- it would be great if we could just subpoena them on our own, but that's the reason back on August the 10th I sent a very specific e-mail. And I would like to print that the out and offer it for the record, specifically stating we would request all of the underlying offense reports for his prior convictions in the event of punishment so that we may address any potential mitigating factors.

And so we've made all the efforts we can to -- to get those records so that we wouldn't have a delay in the middle of this trial. But at this point, it's his constitutional right to have any mitigating factors brought before this jury. And we attempted to get those records over a

month ago, Your Honor.

And in addition to that, we specifically also asked for the August 14th, 2014, offense report as it related to that charge, because it was going to be clear that it would be relevant to this case. We received an offense report. It was opened up to us some time ago. But now just this morning, we have received --

MS. JACK: And I'll address this because I've read it. Just this morning, again, electronically, we were made participants, which means discovery was opened up to us. And for the record, we filed a 39.14 motion for discovery of all offense reports. And just this morning, about five minutes ago, all it took was the State to electronically make this discovery available. And I received 13 pages of discovery we've never seen before dealing with the August 10th, 2014, incident, which the Court doesn't know, but it's been litigated throughout this trial.

Among these records include a family violence packet we've never seen before. Among these records include an affidavit by C. Robles who has testified in this case, who we called and had no idea he provided an affidavit in connection with this case. Among these records include a statement by XXXXXXXXXXXXXX, one of the primary witnesses of the State, that we've never seen before in connection for this.

THE COURT: For the record, what is the 2014

offense that you're referring to?

MS. JACK: The assault on [redacted] and the allegation of injury to a child on Bobby Hallman. And this was litigated in this trial. This was gone into. And we have an affidavit now that we've just now been provided in connection with that. We have a statement from a State's witness we've never seen before we've just now been provided. And our client gave a statement in connection with the 2014 offense that we've never seen before and have never been provided. That is a violation of 39.14, Judge.

THE COURT: And, State, do you have a response?

MS. DEENER: Well, again, Judge, we have had so many different hearings on discovery in this case. I am trying to comply and give them everything that I possibly can. I didn't -- when we have access to it, yes, it exists on TSP. They asked for the offense report. I made sure that they had the offense report. We -- they have asked for numerous things. It was my understanding that they have already subpoenaed all this stuff from Fort Worth Police Department because we had a discovery hearing months ago where they had issued two, three, five different subpoenas for all these records. So I actually thought Defense had more than we actually had in this case.

But we're not trying to hide anything. This is dealing with a 2014 report. They specifically asked for the offense report. We've given that report over to them. This is

an -- they've asked for the family violence packet now. This is an eight-page family violence packet. I think if the remedy is for 39.14, if they feel like that this is something that they need to go into, then how much time do they need to go through for an eight-page report? I mean, I just -- Your Honor knows because you've been a part of this case for the last two years. I am trying to be as transparent and give them everything that I can.

The other thing I wanted to mention, too, I'm e-mailing and text messaging a detective to try to look into that 1999 report to get a faster response than a few days or a few hours. So he's going to look right now and to try to find that. And so, hopefully, I'll have an answer for you in the next few minutes about whether the existence of that 1999 report is over there at the Fort Worth Police Department.

MS. JACK: And are you finished?

MS. DEENER: Well, the only other thing I was going to mention is, Judge, when we deal specifically with the victim impact statement, which I believe is what they were requesting, those are not ever open to the Defense, the victim impact statement. Those have to be ordered by the Court. That was never requested or done in all of the different pretrial hearings that we've had from Your Honor. So I just -- or Judge Dean this last week and the week before.

MS. JACK: And I'm less concerned about the

victim impact statement from the fact that my client's given a statement, that up until September 20th, I've never seen before, Judge. We have made strategic decisions based upon the state of discovery that we received, and we have done so to our detriment because this information has not been provided to us, Judge.

We don't have to specifically name which items we are entitled to because we don't know what the State has, and that's why we asked for everything. This isn't even gray. This is our client's statement. This is [redacted] statement. This is a primary witness by the State that we've never been given this information of.

THE COURT: But it's a statement in connection with a separate offense that's not part of this indictment; is that correct?

MS. JACK: It's been part of this trial --

MS. DEENER: That's --

MS. JACK: -- and it's been litigated, Your Honor.

MS. DEENER: That's correct, Your Honor.

MS. MARTINEZ: And not only that, Your Honor, just now in looking at [redacted] statement, there are inconsistencies with her testimony. So we were not allowed to question her. And her credibility -- our whole Defense was that it was the mother who put these children up to making

these statements. And anything we could do to impeach her credibility was crucial to this case. And I'm looking at the statement and seeing that there are inconsistencies with her testimony.

So it is crucially relevant to this, despite the fact that it involved a separate offense. The -- 38.37 allows them to go into the entire relationship between the defendant and the alleged victims, and that was a crucial part. This August the 14th, 2014 offense involved [redacted] wanting to leave with her dad creating this big ruckus, and that's when the whole family split apart. This was a crucial -- so this isn't just some extraneous offense that has no bearing on the facts of what he's -- he was charged with and what he's now been found guilty of after us not having the information with which to cross-examine her. It's very crucial to this case.

THE COURT: It's 9:30 at this time. The Court is going to take a two-hour recess to permit the Defense to review the new materials that were just disclosed to them today, also to give the State an opportunity to make a determination if the actual offense reports from the July 13th, 1999, burglary of a habitation exists.

And further, if the Defense needs to, the Defense can recall [redacted] to cross-examine her based on this new statement that has been disclosed to the Defense.

MS. DEENER: And, Judge, just -- since we're on

the record, I want to make it also clear, and I can probably offer a -- a copy of this into the record. If you look -- and you wouldn't know this, Judge, but if you look in the offense report from 2014 that we are discussing, it goes specifically into those statements, and it actually goes through and says exactly what XXXXXX said, which is, I think, verbatim, and I'll have to compare them. But it looks like it's almost verbatim what is in this statement that they're discussing. So there's a separate piece of paper that she handwrote out. That is directly in this offense report, as well as the defendant's stated exactly what -- he has a separate statement, if that makes sense. They wrote out --

THE COURT: Well, when you say "this offense report," which one are you referring to?

MS. DEENER: And I apologize, the 2014 report that they're discussing. The 2014 report that deals with an assault where the defendant was arrested for an assault. They are referring to these additional documents they got today, which includes a statement from their client and a statement from XXXXXXXXXXXXXXX Both of those things are referenced in this report and actually go through and say what is in the statement verbatim is all I'm saying. I just wanted that to be clear that this is not new information when it actually goes through, as many reports do, and dictate what was actually said.

But I will inquire. I may have an answer for the report in just a second.

THE COURT: Well, once again, we will take a two-hour recess for the Defense to review the new documents that were just opened. The Defense can recall any witnesses that the Defense feels necessary, including [redacted] if there's new information that the Defense wants to cross-examine her on.

And the Court is ordering the State to make a determination if there are additional reports from July 13th, 1999. So we will be in recess until 11:30.

MS. JACK: And, Your Honor, while I very much appreciate the two-hour break, the problem is we're now in punishment. These matters are relevant --

THE REPORTER: I'm sorry, Judge. Are we still on the record?

THE COURT: We're on the record.

MS. JACK: While I very much appreciate the break, Your Honor, the damage is done. This cross-examination needs to go back in time and take place during guilt/innocence, not punishment. There's nothing that can be done at this point with regard to the guilty verdicts that this jury has delivered. We have no choice but to ask for a mistrial in light of this, Your Honor. There's no mention in the offense report that our client gave a statement.

THE COURT: A request for a mistrial is premature. But if after you have reviewed those documents and if you feel like you need to recall [redacted], and we can even do that outside the presence of the jury, to see what her testimony would have been if she'd been cross-examined based upon that statement, at that time if you need to move for a mistrial, you may do that and the Court will address it.

MS. JACK: Thank you, Your Honor.

THE COURT: At this time, we're taking a two-hour recess. Please take the defendant back. We're off the record.

(Court in recess at 9:37 a.m. to 11:24 a.m.)

HEARING OUTSIDE THE PRESENCE OF THE JURY

THE COURT: We're back on the record outside the presence of the jury.

And, State, was there an additional matter you wished to place on the record prior to seating the jury?

MS. DEENER: I do, Your Honor. Over the break --

THE COURT: And you may proceed.

MS. DEENER: I'm sorry?

THE COURT: You may proceed.

MS. DEENER: Thank you, Your Honor.

Over the break we did have our investigator delve into this issue to try to figure out if -- the existence

of the burglary of a habitation from 19, I believe --

THE COURT: '99.

MS. DEENER: -- 99 -- yes, Judge -- whether that existed in the Fort Worth Police Department. We don't have any of those in our warehouse. We have a destruction policy, I think this has already been mentioned, of 20 years.

But the '90 and the '99, which are both the basis of the Defense attorney's request for the habitual count, those were -- those occurred in '98 and '89. We were able to locate -- our investigator was able to locate an incident report for the burglary of a habitation. That was e-mailed over to Defense counsel. That's a -- I believe it's a four -- four- or five-page report regarding the burglary of a habitation in 1998.

I also wanted to -- and then we also inquired about the burglary of a building with Arlington Police Department, and that does not exist. They are unable to find that. That does not exist.

I also wanted to make a part of the record -- I believe I had marked it earlier.

Judge, may I approach the bench?

THE COURT: Yes. And could I have them back after you're through with it?

MS. DEENER: Absolutely. I also marked State's Exhibit 36, which is a copy of the 2014 assault case that was

unrelated, of course, to the 2016 and 2017 sexual abuse cases in this case. That report, which is Report Number 14-76143, that report has been made available to the Defense via the TSP, our online case system, since February of 2017. I've also marked Robert Hallman's statement from the unrelated 2014 incident as State's Exhibit 37, and [redacted] statement from the 2014 incident as State's Exhibit 38. Both of those statements, in looking at State's Exhibit 36, when you look into the offense report, I believe it's on Page 4 of 4, it references what Robert F. Hallman and what [redacted] said or stated about their rendition of what occurred.

Those appear to be, if not verbatim, they are almost exactly the same. There's nothing new. Words that may be changed and/or things like that, but they -- they are almost exactly the same. There's no new information that's contained in State's Exhibit 38 or 37, which are the statements.

And just for the record, to be clear, because I'm not sure what was on or off the record before we took a break, there is a -- I believe they asked us this morning if we had a family violence packet for this unrelated 2014 assault. And so when we looked into TSP, that is where we located State's Exhibit 37 and 38, these two statements. And again, those were mentioned in State's Exhibit 36. And they've had access to that to cross-examine [redacted] and the defendant. The defendant's statement, of course, is also

included.

I also want to reference, because Your Honor wasn't here --

THE COURT: Well, just a moment.

MS. DEENER: Okay.

THE COURT: What you just said, they had access to State's Exhibit 36 for purposes of cross-examination?

MS. DEENER: Yes, Your Honor.

THE COURT: And then State's Exhibits 37 and 38 were disclosed today?

MS. DEENER: Yes, Your Honor, those were given to them today.

THE COURT: And are you offering 36, 37 and 38 all for the record.

MS. DEENER: I am, Your Honor.

(State's Exhibits 36 through 38 offered.)

THE COURT: And any objection for the record?

MS. JACK: I don't know what they are, Judge.

THE COURT: Would you show them, please.

MS. DEENER: Sure. State's Exhibit 36 is this -- the same offense report that the Defense has had from 2014. And then the other two exhibits are from the family violence packet from the 2014 report.

MS. JACK: And, Judge, for purposes of this hearing, we have no objection, though I do want to state that

we very much disagree with the State's assessment of whether or not [redacted] written statement comports with the language contained in the offense report. And only because if I say nothing, it's deemed to be that I agree with what she said. I don't agree.

THE COURT: But the question was, any objection to the admission of State's Exhibits 36, 37 and 38 for the record only?

MS. JACK: Of course not, Your Honor.

THE COURT: So State's Exhibits 36, 37 and 38 are all admitted for the record.

And could I see them again, please?

(State's Exhibit 36 through 38 admitted.)

MS. DEENER: Yes, Judge.

THE COURT: And prior to seating the jury, is that all you wanted to put on the record?

MS. DEENER: It's not, Judge. If I can just have these two exhibits marked, and then I will be ready.

And State's Exhibit 39, Your Honor, also includes an e-mail exchange between Defense counsel and I back in August 2018, so just about a month or so ago. I believe this was the August e-mail that was referenced before we took a break where the Defense counsel was asking for Hallman's underlying offense reports from his previous convictions. Also included in that e-mail, and it will reflect for the record,

there was a request for Omarioun's Tarrant County history and the underlying offense reports for those as well.

I believe that the Defense did issue a subpoena for the underlying offense reports from Fort Worth Police Department for Omarioun Cook. And then it's my response and it also indicates that we do not have access to the offense -- any unrelated offense reports in the pending continuous case. But I do -- the prior two assault reports that are referenced, one of which now is in evidence for the record, had been uploaded to TSP and had been open to them. And that I would look into any other reports.

When I did that, I did access a fleeing case that was referenced from 2013. I was able to find that on our online case system, and I sent that to Defense on this Friday, August the 10th. The response from the Defense indicated that the main offense reports that they were seeking are the ones that are part of the habitual offender notice. We need those for punishment phase unless you intend on waiving the habitual offender notice. And we need to review those for potential mitigating factors.

Of course, all of the contents of the e-mails will be reflected because they're part of the record, but we would offer those just for purposes of the record.

(State's Exhibits 39 and 40 offered for record only.)

MS. JACK: And we have no objection, Your Honor.

THE COURT: What are the numbers of the exhibit?

MS. DEENER: I believe it's 39 and 40.

MS. MARTINEZ: 39 and 40, your Honor. No objection.

THE COURT: State's Exhibit 39 and 40 are admitted for the record only.

(State's Exhibits 39 and 40 admitted for record only.)

MS. DEENER: And the only last thing I wanted to mention, Your Honor, is because you were not able to preside over last week and the beginning of this week's case-in-chief, during the guilt/innocence portion, the -- a reference was made to the 2014 assault cases by I'm sure both parties at some point, but the main focus of those dealt with whether XXXXallman had told the police officers that went out there to the scene about the sexual abuse. In fact, Defense counsel called both officers that were present for those assaults, so those domestic disturbance calls, to ask them about the existence of that. Of course, that's nowhere in these offense reports.

And so it doesn't -- while, yes, this is related in a sense that it is XXXXXXXXXXXXXXX and Robert Hallman that are involved, the kids were present. This is an unrelated offense report that does not have anything to do with the

continuous sexual abuse of [redacted] -- [redacted] So that's all that I have for the State -- from us, and I'm ready to proceed.

THE COURT: And the last statement you said, you're referring to State's Exhibit 36, to that offense report?

MS. DEENER: Yes, I am, Judge.

THE COURT: All right. And, Defense, did you want to respond?

MS. JACK: Yes, Your Honor. For purposes of the record, we would offer Defense Exhibit No. 25, which was the original request for discovery pursuant to 39.14 that was filed September the 6th of 2016.

(Defense Exhibit 25 offered for record only.)

THE COURT: And any objection for the record?

MS. DEENER: I do not.

THE COURT: And Defense Exhibit No. 25 is admitted for the record only.

(Defense Exhibit 25 admitted for record only.)

MS. JACK: We would offer Defense Exhibit 26, which includes the Defendant's Seven Part Motion for discovery, which was filed December the 6th of 2016.

(Defense Exhibit 26 offered for record only.)

MS. DEENER: I do not -- I do not have any objection.

THE COURT: And Defense Exhibit No. 26 is

admitted for the record only.

(Defense Exhibit 26 admitted for record only.)

MS. JACK: And I would ask the Court to take note of specifically "Request Number Two" in which the Defense requests -- specifically requests any and all inculpatory or exculpatory statements or confessions made by our client to the police, prosecuting attorney, law enforcement agents or private citizens which are within the knowledge of the investigating law enforcement agents or the prosecuting attorney. This request includes both written and oral statements allegedly made by our client prior to and/or after arrest.

I would also ask the Court to take notice of "Request Number Five" in which we specifically request any statement made by a State's witness in his or her communications with the district attorney, police or other investigating agency or person, whether written or oral, which are inconsistent with the testimony the State intends to elicit from State witness during the trial.

We would ask the Court to take judicial notice specifically of part five of the same Defendant's Exhibit No. 26 in which we ask for motion of production of witnesses' statements.

And we would ask -- we would ask for the Court to take judicial notice of each of these items that I've referenced in Defense Exhibit No. 26.

THE COURT: And may I see Defense Exhibits 25 and 26, please.

MS. JACK: Yes, Your Honor. And, Judge, it may be in a different case number only because this --

THE COURT: We're looking through all the files.

MS. JACK: -- case had been indictment four times, right. And at that time, it would have been related to --

THE COURT: It's filed under 1451589, but we're trying to locate it.

MS. JACK: Right. I think at one point the Court ruled that all of the motions and notices would be transferred to this case.

THE COURT: Well, while we're looking for it in the original file --

MS. JACK: I'll continue, Your Honor.

THE COURT: All right.

MS. JACK: The State has provided for the Court the offense report -- and I do not recall because I'm not looking at the document. The Court has it before it.

May I approach?

THE COURT: It's State's Exhibit 36.

MS. JACK: 36?

THE COURT: Yes.

MS. JACK: And I would ask, for the record, at

what point the State -- well, I would offer Defense Exhibit No. 28, which is the information -- the missing 13 pages that was received by the Defense this morning after the conclusion of guilt/innocence and our client having been found guilty. We are now in punishment. Our client has already testified on direct and cross-examination, and we were just provided Defense Exhibit 28. And so I would offer Defense Exhibit 28 for the record.

(Defense Exhibit 28 offered for record only.)

THE COURT: Any objection for the record?

MS. DEENER: No, not for the record, Judge.

THE COURT: And Defense Exhibit 28 contains additional documents that are not in State's Exhibit 36?

MS. JACK: Absolutely.

THE COURT: That were disclosed today?

MS. JACK: Today.

THE COURT: And so no objection?

MS. DEENER: Not from the State.

THE COURT: Defense Exhibit No. 28 is admitted for the record only.

(Defense Exhibit 28 admitted for record only.)

MS. JACK: And I would ask, for the record, for the State to state at what point and what date they received the contents of Defense Exhibit No. 28.

THE COURT: State, are you able to answer that?

MS. DEENER: I -- I don't know if I can right now, but what I can tell you is Defense counsel asked for that today, this family violence packet on this 2014 offense report. And so we looked through the case today. When it actually was given to -- uploaded onto TSP, I would have -- I would have to look through it and see, Judge. But when they asked for the family violence packet on this 2014 case, then we looked through it and then printed it out and gave it to them.

THE COURT: So are all the documents in Defense Exhibit 28 the family violence packet?

MS. JACK: No, Your Honor.

THE COURT: What else are they?

MS. JACK: There is an affidavit by Officer Robles who testified in this case, and the Defense called Officer Robles. And part of the cross-examination by the State of this officer -- and the problem is, Your Honor, you're not aware of the testimony that's gone on. And so when counsel for the State talks about this date being unrelated, it, in fact, was Number 11, the abuse of [redacted] and the assault was earlier, in the State's 38.37 and 404(b) notice.

And I would ask the court reporter to give the Court -- and I think this can be done relatively simply. I don't know. To look up how many times the date August the 10th and August the 9th of 2014 came up in this, quote, un- -- you

know, quote, unrelated offense. I would ask the court reporter to print out for the Court how many times this assault was referenced in this trial. It was part and parcel of the trial.

And we put on Officer Robles believing that the only information he had was contained in his offense report, Judge. And the State's cross-examination was, you don't remember -- can you tell me what this person looks like? You don't even remember what Robert Hallman looks like? You don't really remember anything in this case. Knowing all the while that they had his sworn affidavit in their possession, which, in fact, does contain quite a bit of information.

A part of the testimony in this case centered on -- or a large part of this case centered on the credibility of [redacted] who testified that she told officers on August the 10th of 2014 that she believed and had concerns that [redacted] was being sexually abused. She said she told the officers this, and the officers then in turn, based upon what she said, asked [redacted] whether or not she was being sexually abused. We put on two officers to say was that ever mentioned to you? They said, no.

And now we have an affidavit with which would have further bolstered and buttressed our position that she never said that. In addition to that, contained within Defense Exhibit 28 is a sworn statement by [redacted] that makes no mention of any concern or allegation of sexual abuse. And

as the Court is well aware, it's one thing to cross-examine a witness based on words that are said to an officer that are not even in quotes and to have a written statement in her own handwriting that is signed -- it's a far different cross-examination, Your Honor.

MS. DEENER: Judge, if I can just speak to that. The -- it's a very different thing to have a case, older case, various cases from a defendant that are on TSP. Like I mentioned before, some of those things we have access to. Some of them we don't. It's not like I've been sitting here having this in my possession trying to hide it. I just -- I just want to mention that for the record.

But in the affidavit, the sworn statement, if they've had an opportunity to view that over the lunch break, it is copy and pasted verbatim from the same offense report that we have had and that they have had since February of 2017.

I think it's also important, too, to note that they were able to cross-examine XXXXXX at length about she -- this whole issue about whether XXXX ever outcried about sexual abuse. XXXXXX says -- they were able to cross-examine her on that issue. No facts are different in her statement that were not already in that offense report. It was regurgitated in the offense report, so they had that and had the ability to ask her those questions.

They also had the ability to ask the officer --

both officers that question and both [redacted] that question, and in which they did. And all of them explained -- [redacted] said, yeah, they asked me about sexual abuse, and I denied it. And [redacted] says, yeah, I told the officer about it, but they never asked. And that's not --

MS. JACK: That's a misstatement of [redacted] testimony.

THE COURT: Well, just to expedite this process, what is the Defense requesting?

MS. JACK: I'm requesting a mistrial, Your Honor.

THE COURT: All right. And on what basis?

MS. JACK: On the basis of a violation of 39.14. This affected our trial strategy. This affected our recommendation for our client not to testify in guilt/innocence. This infringed upon our ability to cross-examine effectively [redacted] Officer Robles, and the list goes on.

The jury asked for testimony from [redacted] when they were deliberating. The statement by [redacted] mentions that [redacted] wanted to go smoke marijuana. That was never a part of her testimony, and it is no place in the offense report, Judge. I mean, if [redacted] -- and that's the case upon which this jury has returned verdicts. Her credibility is in issue as well, and she presented much

different from a young lady who wanted to go smoke pot.

MS. DEENER: And, Judge, again, it is a bit unfair because you didn't get to hear the testimony, but XXXXXXXXXX talked about marijuana being smoked with her father. That was mentioned numerous times. So that issue has been brought in front of the jury, that fact.

There are no new facts inside of this statement that were not already provided in the offense report that has been given to them that they have had access to in 2017. Also, Your Honor, it will be part of the record, that the jury asked for XXXXXXXX testimony regarding where she slept during the abuse. It had absolutely nothing to do from 2014.

I think Defense counsel -- you have to show under 39.14 how that would be relevant and material to the case at hand. These facts about whether or not this assault occurred, the reason in which that became an issue was dealing with whether XXX told the police. Having these two statements changes nothing because this (sic) contents are already included in the 2014 report. There's nothing different. There's nothing new.

MS. JACK: Your Honor, there's a written statement by my client. And the very first thing that the Defense is entitled to in defending someone effectively is any written statement by their client. And I would ask the Court to ask the court reporter to access every time this assault and

this offense came up in this trial. This was part and parcel to this trial.

And if the Court is not -- is not so inclined, I would ask -- Judge Dean is available tomorrow. He's heard the entire trial. We would either ask for a continuous to get the record or those parts, or we would ask for Judge Dean to preside only because I know there's no way for you to read the entire transcript of the entire trial, Your Honor.

THE COURT: And the Court has reviewed State's Exhibits 36 and 37 and 38. And for the record, all of these pertain to an extraneous offense, not the offense that the defendant is being tried for in this trial, but an extraneous offense from August 12th, 2014. And in that offense, the victim is XXXXXXXXXXXXXX not the two victims in this case.

And the Court has further reviewed what is contained in the report by the officer in State's Exhibit 36 and compared that to the written statements of Robert Hallman in State's Exhibit 37 and XXXXXXXXXXXXXX in State's Exhibit 38. And the essential information from those two statements is contained on Page 4 of State's Exhibit 36.

So the Court rules that for purposes of 39.14, that State's Exhibits 37 and 38 are not material in that their omission would not create a reasonable doubt that did not otherwise exist.

And is there a further matter you need to take

up prior to seating the jury?

So your motion for a mistrial is denied, and your motion for a continuance is denied.

MS. JACK: We would ask, Your Honor, as part of the record for appeal for the State to ascertain when they came into possession of the information contained within Defense Exhibit 28.

THE COURT: And I'll let them do that, and we can supply it at a later time.

MS. MARTINEZ: Your Honor, I would like to add for the record --

THE COURT: Yes.

MS. MARTINEZ: -- that 39.14 specifically states that these things that we are entitled to under 39.14, which include statements of a witness that constitute or contain evidence material to any matter involved in the action. There's nothing in 39.14 that excludes extraneous offenses. This date of August the 14th of 2014 was mentioned over and over and over again. XXXXXXX specifically said she reported that she had concerns of sexual abuse. That was her testimony.

That offense had to do with Robert finally leaving the home. That was the crux of that particular assault, and it was definitely related. To try to say now that it was unrelated when it was talked about over and over and over again, 39.14 does not say one single thing about it not

being -- extraneous matters not -- being a reason for not being entitled to this. It says, evidence material to any matter involved in the action. And it was absolutely material.

And we'd also provide the Court with *Valdez versus State* where it says, discovery matters, the State's attorney is answerable only for evidence in its direct possession or in possession of law enforcement agencies. So they are deemed to turn this information over to us.

A sworn statement that we've never received, a written statement from [redacted], a statement by our own client written in his own hand not provided to us is denying him his due process, denying us to be able to cross-examine the witnesses as to their credibility.

And I will again point out -- I know the Court did not hear this case, but I would point out that our crux was that [redacted] was not telling the truth, and this could have and I believe would have made a difference. The jury deliberated for some nine hours on this matter, actually acquitted him of count one. So we don't really know and we will never know whether or not these items could have made a difference. He's denied due process in this case, Your Honor, and we do -- note our exception. We'd ask the Court to note our exception.

THE COURT: And, once again, the Court is not ruling that everything contained in State's Exhibit 36 is not relevant and not material, but the Court is merely ruling that

there is not additional information in State's Exhibits 37 and 38 that are not contained in State's Exhibit 36, and that is the Court's ruling.

Please seat the jury.

MS. JACK: Can we also supplement the record, Your Honor, with -- and I don't know how easy this is to do, with a word search at a later point of all the times that the date of August the 10th, 2014, was mentioned during this trial?

THE COURT: That will be part of the appellate record.

Please seat the jury.

MS. MARTINEZ: Judge, we have another exhibit that was just provided to us, today as well, over the break. It's Defendant's Exhibit 29. It's the offense report from the burglary of a habitation for which the State cross-examined Mr. Hallman. And we just got it. We've looked at it, and it turns out that in looking at this report --

May I approach, Your Honor?

THE COURT: Yes.

MS. MARTINEZ: This is the report that was just provided to us. It's Defendant Exhibit 29. We'd offer it into the record.

(Defense Exhibit 29 offered for record only.)

THE COURT: Any objection for the record.

MS. DEENER: I do not have any objection. We

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